

FRENCH SPOILIATION CLAIMS.

FEBRUARY 28, 1889.—Referred to the House Calendar and ordered to be printed.

Mr. MANSUR, from the Committee on Claims, submitted the following

REPORT:

[To accompany Mis. Docs. 84, 102, 119, *et al.*]

The Committee on Claims, having had under consideration the reports of the Court of Claims in cases known as "French spoliation claims," referred to said committee by the House of Representatives, now submit the following report thereon:

Your committee, when it surveys the wealth of legal lore contributed in the past to the consideration of what are known as the French spoliation claims, finds itself hesitant to attempt the task of adding thereto, and will mainly content itself with a full and, it hopes, fair exposition of all essential facts that show the situation and help to elucidate the same that existed between France and this country during the period in which these spoliation claims originated, coupled with comments thereon of statesmen, diplomats, and jurists bearing upon the subject.

For, in the language of Senator Smith, in his report made to the Senate February 15, 1850—

There is probably no subject submitted to Congress since the organization of the Government under the Constitution, in 1793, which has been so fully and thoroughly investigated by committees of the two houses as the present. Every essential fact having a bearing on the question, and every consideration of the international law, combined with a full development of the proceedings of both the French and American Governments in this regard, with an exposition of our diplomacy and numerous treaties, all, in the judgment of this committee, evincing conclusively the equity of these claims, have, from time to time, been laid before Congress.

In the House of Representatives there have been presented no less than fourteen reports, as follows:

| No. | Session. | Congress. | By whom presented. | Committee. |
|-----|-------------|---------------------|-------------------------|--------------------------|
| 1 | Second..... | Seventh..... | Mr. Giles..... | Select. |
| 2 | do..... | Ninth..... | Mr. Marion..... | Do. |
| 3 | First..... | Seventeenth..... | Mr. Russell..... | Foreign Affairs. |
| 4 | do..... | Eighteenth..... | Mr. Forsyth..... | Do. |
| 5 | do..... | Twentieth..... | Mr. Edward Everett.. | Do. |
| 6 | Second..... | do..... | do..... | Do. |
| 7 | do..... | Twenty-third..... | do..... | Do. |
| 8 | do..... | Twenty-fifth..... | Mr. Howard..... | Do. |
| 9 | First..... | Twenty-sixth..... | Mr. Cushing..... | Do. |
| 10 | Second..... | Twenty-seventh..... | do..... | Do. |
| 11 | Third..... | do..... | do..... | Do. |
| 12 | First..... | Twenty-eighth..... | Mr. C. J. Ingersoll.... | Do. |
| 13 | do..... | Twenty-ninth..... | Mr. Truman Smith.... | Foreign Affairs (verbal) |
| 14 | do..... | Thirtieth..... | do..... | Do. |

In the Senate the subject has undergone an investigation by the committees thereof in a manner equally elaborate, and reports have from time to time been submitted to this body, as follows:

| No. | Session. | Congress. | By whom presented. | Committee. |
|-----|-------------|---------------------|---------------------|--------------------|
| 1 | First..... | Fifteenth..... | Mr. Roberts..... | Claims. |
| 2 | Second..... | Nineteenth..... | Mr. Holmes..... | Select. |
| 3 | First..... | Twentieth..... | Mr. Chambers..... | Do. |
| 4 | Second..... | do..... | do..... | Do. |
| 5 | First..... | Twenty-first..... | Mr. Livingston..... | Do. |
| 6 | Second..... | do..... | do..... | Do. |
| 7 | First..... | Twenty-second..... | Mr. Wilkins..... | Do. |
| 8 | Second..... | do..... | do..... | Do. |
| 9 | do..... | Twenty-third..... | Mr. Webster..... | Do. |
| 10 | do..... | Twenty-seventh..... | Mr. Choate..... | Foreign Relations. |
| 11 | Third..... | do..... | Mr. Archer..... | Do. |
| 12 | First..... | Twenty-eighth..... | Mr. Choate..... | Do. |
| 13 | Second..... | do..... | do..... | Do. |
| 14 | First..... | Twenty-ninth..... | Mr. Clayton..... | Select. |
| 15 | Second..... | do..... | Mr. Morehead..... | Do. |

It is a remarkable fact that there has not been a report adverse to these claims in either house of Congress since the President laid before the Senate, by message of May 20, 1826, the correspondence between the United States and France relative to these claims. Prior to that disclosure, three adverse reports were made, to wit: one in the Senate by Mr. Roberts, from the Committee on Claims, in 1818; and two in the House of Representatives, from the Committee on Foreign Affairs—the first by Mr. Russell in 1822, and the other by Mr. Forsyth in 1814, all of which were far from being positive in opposition to their justice.

The papers communicated by the President in his message of the 20th May, 1826, poured a flood of light on the subject; and since then every committee having the matter in charge has been constrained to come to the conclusion that these claims are just and equitable.

This committee can only account for the unexampled delay which (in face of exposures of great agency by some of the most accomplished jurists and statesmen that have occupied seats in this chamber) has occurred by the magnitude of the claims, and the large draught which their allowance would make on the Treasury of the United States. It would be difficult to find anywhere a more striking illustration of the truth of the axiom that delay is a denial of justice. (Senate Com. Rep. No. 44, 1st sess. 31st Congress.)

Your committee add the following list of favorable reports made since 1850.

| No. | Where reported. | By whom reported. | Committee. | Date. | Report. | No. of bill. |
|--------|-----------------|---------------------|------------------------|---------------|-------------|--------------|
| 30.... | Senate.. | Mr. Tru. Smith..... | Select..... | Feb. 5, 1850 | Favorable.. | 101 |
| 31.... | House.. | Mr. Buel..... | Foreign Affairs..... | June 14, 1850 | do..... | 64 |
| 32.... | Senate.. | Mr. Tru. Smith..... | Select..... | Jan. 24, 1851 | do..... | 101 |
| 33.... | do..... | Mr. Bradbury..... | do..... | Jan. 14, 1852 | do..... | 64 |
| 34.... | do..... | Mr. Hamlin..... | do..... | Feb. 15, 1854 | do..... | 36 |
| 35.... | House.. | Mr. Bayly..... | Foreign Affairs..... | Jan. 4, 1855 | do..... | 117 |
| 36.... | do..... | Mr. Pennington..... | do..... | Mar. 3, 1857 | do..... | 865 |
| 37.... | Senate.. | Mr. Crittenden..... | Select..... | Feb. 4, 1858 | do..... | 45 |
| 38.... | House.. | Mr. Clingman..... | Foreign Affairs..... | May 5, 1858 | do..... | 552 |
| 39.... | do..... | Mr. Royce..... | do..... | Mar. 29, 1860 | do..... | 259 |
| 40.... | Senate.. | Mr. Crittenden..... | Select..... | June 11, 1860 | do..... | 428 |
| 41.... | do..... | Mr. Sumner..... | Foreign Relations..... | Jan. 13, 1862 | do..... | 114 |
| 42.... | do..... | do..... | do..... | Jan. 20, 1863 | do..... | 114 |
| 43.... | do..... | do..... | do..... | Apr. 4, 1864 | do..... | 213 |
| 44.... | Senate.. | Mr. Cameron..... | Foreign Relations..... | Jan. 30, 1872 | do..... | 103 |
| 45.... | House.. | Mr. Myers..... | Foreign Affairs..... | May 19, 1872 | do..... | 384 |
| 46.... | do..... | Mr. Frye..... | do..... | May 5, 1882 | do..... | 1465 |
| 47.... | do..... | Mr. Hoar..... | Claims..... | Mar. 12, 1884 | do..... | 1820 |
| 48.... | House.. | Mr. Cox..... | Foreign Affairs..... | Jan. 24, 1884 | do..... | 745 |

Your committee beg to call attention to the war of the thirteen colonies against the mother country waged for the purpose of establishing their independence. In their darkest hour, and when without foreign aid

it seemed almost impossible for them to win success, France proposed an alliance. The colonies, with an eye to independence and that alone, entered into an alliance both offensive and defensive with France to be perpetual in character. We quote from that treaty the following sections, which show the exact nature of the obligations entered into by each nation :

ARTICLE II.

The essential and direct end of the present defensive alliance is to maintain effectually the liberty, sovereignty, and independence absolute and unlimited, of the said United States, as well in matters of government as of commerce.

ARTICLE XI.

The two parties guarantee mutually from the present time and forever against all other powers, to wit: The United States to His Most Christian Majesty, the present possessions of the Crown of France in America, as well as those which it may acquire by the future treaty of peace. And His Most Christian Majesty guarantees on his part to the United States their liberty, sovereignty, and independence, absolute and unlimited, as well in matters of government as commerce, and also their possessions, and the additions or conquests that their Confederation may obtain during the war, from any of the dominions now or heretofore possessed by Great Britain in North America, conformable to the 5th and 6th articles above written, the whole as their possessions shall be fixed and assured to the said States at the moment of the cessation of their present war with England.

From the treaty of commerce of the same date made between the same contracting parties, we quote the following articles :

ARTICLE XVII.

It shall be lawful for the ships of war of either party, and privateers, freely to carry whithersoever they please the ships and goods taken from their enemies, without being obliged to pay any duty to the officers of the admiralty or any other judges; nor shall such prizes be arrested or seized when they come to and enter the ports of either party; nor shall the searchers or other officers of those places search the same, or make examination concerning the lawfulness of such prizes, but they may hoist sail at any time, and depart and carry their prizes to the places expressed in their commissions, which the commanders of such ships of war shall be obliged to show; on the contrary; no shelter or refuge shall be given in their ports to such as shall have made prize of the subjects, people, or property of either of the parties; but if such shall come in, being forced by stress of weather, or the danger of the sea, all proper means shall be vigorously used that they go out and retire from thence as soon as possible.

ARTICLE XXII.

It shall not be lawful for any foreign privateers, not belonging to subjects of the most Christian King nor citizens of the said United States, who have commissions from any other prince or State in enmity with either nation, to fit their ships in the ports of either the one or the other of the aforesaid parties, to sell what they have taken, or in any other manner whatsoever to exchange their ships, merchandises, or any other lading; neither shall they be allowed even to purchase victuals, except such as shall be necessary for their going to the next port of that prince or State from which they have commissions.

Your committee call attention to the fact that these two treaties guaranteed two vital matters: By France, of the independence, absolute and unlimited, of the United States as well in matters of government as of commerce. By the United States, the guaranty of the present possessions of the Crown of France in America; as well as conceding to France most highly valuable, if not vital, exclusive port privileges. The articles from the treaty of commerce refer to the exclusive port privileges granted to France. It is a conceded fact in all the discussions of the past that France performed her part of the treaty of alliance and did

help us to gain and insure our independence. In this connection it is well to here show what the possessions of France in America at that time were, and what she lost.

Dr. Wharton, in his work on International Law, second edition, from which edition all future quotations from Wharton will be made, on page 721 states:

At the opening of the war France possessed the fertile islands of St. Domingo, Martinique, Guadeloupe, St. Lucia, St. Vincent, Tobago, Desada, Marie-Galante, St. Pierre, Miquelon, and Granada, with a colony on the mainland at Cayenne, and "in little more than a month the French were entirely dispossessed of their West India possessions, with hardly any loss to the victorious nations." (Alison's History, vol. 3, p. 396.)

After our independence was achieved a gradual change of feeling began to come over the mind of America. When it is remembered that we were at that time an entirely agricultural people, with no manufacturing industries, it was of vital importance to our people to restore their shattered fortunes, which alone could be done by an extended foreign commerce, a feeling began to grow in America that a closer relation for commercial purposes was a necessity with Great Britain. As this feeling developed, France claimed that we grew negligent of her rights, and was not in good faith living up to our treaty stipulations with her. Under this feeling France, in 1793, began minor depredations upon our commerce; and when, in 1794, America entered into the treaty of commerce with Great Britain, known as the "Jay treaty," this feeling on the part of France was intensified, and their depredations upon our commerce became more violent and hostile in their character from year to year. The essential features of this treaty of Jay, by which important rights inimical to the interests of France and in direct conflict with the terms of the treaty of 1778 made with her by America, are as follows:

Treaty of 1784 with Great Britain. (Jay treaty.)

ARTICLE XXIV.

It shall not be lawful for any foreign privateers (not being subjects or citizens of the said parties) to have commissions from any other prince or State in enmity with either nation to arm their ships in the ports of either of the said parties, nor to sell what they have taken nor in any other manner to exchange the same; nor shall they be allowed to purchase more provisions than shall be necessary for their going to the nearest port of that prince or State from whom they obtained their commissions.

ARTICLE XXV.

It shall be lawful for the ships of war and privateers belonging to the said parties, respectively, to carry whithersoever they please the ships and goods taken from their enemies, without being obliged to pay any fee to the officers of the admiralty, or to any judge whatever; nor shall the said prizes, when they arrive at and enter the ports of the said parties be detained or seized, neither shall the searchers or other officers of those places visit such prizes (except for the purpose of preventing the carrying of any part of the cargo thereof on shore in any manner contrary to the established laws of revenue, navigation, or commerce), nor shall such officer take cognizance of the validity of such prizes; but they shall be at liberty to hoist sail and depart as speedily as may be, and carry their said prizes to the place mentioned in their commissions or patents, which the commanders of the said ships of war or privateers shall be obliged to show. No shelter or refuge shall be given in their ports to such as have made a prize upon the subject or citizens of either of the said parties; but if forced by stress of weather or the dangers of the sea to enter therein particular care shall be taken to hasten their departure and to cause them to retire as soon as possible. Nothing in this treaty contained shall, however, be construed or operate contrary to former and existing public treaties with other sovereigns or states. But the two parties agree that while they continue in amity neither of them will in future make any treaty that shall be inconsistent with this or the preceding article.

Neither of the said parties shall permit the ships or goods belonging to the subjects or citizens of the other to be taken within cannon shot of the coasts, nor in any of the bays, ports, or rivers of their territories, by ships of war or others having commission from any prince, Republic, or State whatever. But in case it should so happen, the party whose territorial rights shall thus have been violated shall use his utmost endeavors to obtain from the offending party full and ample satisfaction for the vessel or vessels so taken, whether the same be vessels of war or merchant vessels.

Your committee call the attention of the House to the fact that the port privileges granted to Great Britain are substantially, if not literally, in the same language by which the same rights are guarantied to France in the treaty of 1778, with the further addition that in Art. 25 of Jay treaty America stipulates that while she continues in amity with Great Britain that she will not in future make any treaty that shall be inconsistent with the provisions of articles 24 and 25, which gave the same port privileges to Great Britain as had been guarantied in 1778 to France. It now becomes necessary to a proper understanding of the situation that existed between France and Great Britain during the period of spoliations that some description of the outrages committed upon our vessels and commerce should be given. This, your committee prefer to give in the language of Mr. Pickering, Secretary of State, in his instructions to our envoys at Paris.

As frequent references will be made hereafter to Document 102, it becomes necessary to state that it is "A message from the President of the United States, transmitting to the first session of the Nineteenth Congress copies of the several instructions to the ministers of the United States to the Government of France, and of the correspondence with said Government, having reference to the spoliations committed by that power on the commerce of the United States anterior to September 30, 1800, in compliance with the resolution of the Senate," which compilation contains 840 pages, comprising 546 documents.

Copy of the instructions (No. 346 of Doc. 102) to Oliver Ellsworth, William Richardson Davie, and William Vans Murray, esquires, envoys extraordinary and ministers plenipotentary of the United States of America to the French Republic.

GENTLEMEN: You have been witnesses of the enduring patience of the United States under the unexampled aggressions and hostilities authorized and sanctioned by the French Republic against the commerce and citizens of the United States, and you are well informed of the measures adopted by our Government to put a stop to these evils, to obtain redress for the injured, and real peace and security to our country. And you know that, instead of relief, instead of justice, instead of indemnity for past wrongs, our very moderate demands have been immediately followed by new aggressions and more extended depredations, while our ministers, seeking redress and reconciliation, have been refused a reception, treated with indignities, and finally driven from its territories.

This conduct of the French Republic would well have justified an immediate declaration of war on the part of the United States; but desirous of maintaining peace, and still willing to leave open the door of reconciliation with France, the United States contented themselves with preparations for defense and measures calculated to protect their commerce.

First. At the opening of the negotiation you will inform the French ministers That the United States expect from France, as an indispensable condition of the treaty, a stipulation to make to the citizens of the United States full compensation for all losses and damages which they shall have sustained by reason of irregular or illegal captures or condemnations of their vessels and other property under color of authority or commissions from the French Republic or its agents. And all captures and condemnations are deemed irregular or illegal when contrary to the law of nations, generally received and acknowledged in Europe, and to the stipulations in the treaty of amity and commerce of the 6th of February, 1778, fairly and ingenuously interpreted, while that treaty remained in force, especially when made and pronounced.

(1) Because the vessels lading, or any part thereof, consisted of provisions or merchandise coming from England or her possessions.

(2) Because the vessels were not provided with the rôles d'équipage prescribed by the laws of France, and which it has been pretended were also required by treaty.

(3) Because sea-letters, or other papers were wanting, or said to be wanting, when the property shall have been, or shall be, admitted or proved to be American. Such defect of papers, though it might justify the captors and exempt them from damages for bringing in such vessels for examination, could not with reason be a ground of condemnation.

(4) When the owners, masters, or supercargoes shall have been refused a hearing, or placed in situations rendering their presence at the trials impracticable.

(5) When the vessels or other property captured shall have been sold or otherwise disposed of without a regular trial and condemnation.

Captures and condemnations for such causes and under such circumstances are manifestly irregular or illegal.

The French Government, if it has any serious wish to accommodate existing differences, can make no difficulty in admitting the general proposition, that for injuries arising from violated laws and engagements reparation shall be made. In every claim under this general stipulation the question will occur, Has the treaty or the law of nations been violated?

But such a general stipulation will not be sufficient. The five specific propositions just stated are obviously proper rules of adjudication; but the previous admission of the first and second is vastly important, to remove from hazard the most interesting claims of our citizens. To capture neutral property, because it was produced or manufactured in the country of an enemy to France, is so palpably unjust, that it seems improbable that even the men who originated the law, were they still in power, would persist in it as of right; and it is scarcely possible for their successors to hesitate on this point. To hesitate, would be to doubt whether a man has a right to occupy his own house or to wear his own clothes, unless he had built the first or manufactured the last with his own hands.

The second proposition, respecting the role d'équipage, as well as the first should be insisted on. Until the decree of the Directory of March 2, 1797, was passed, and we had felt its fatal effects, we had no idea of the meaning which the French applied to the phrase, role d'équipage.

Second. If these preliminaries should be satisfactorily arranged, then, for the purpose of examining and adjusting all the claims of our citizens, it will be necessary to provide for the appointment of a board of commissioners, similar to that described in the sixth and seventh articles of the treaty of amity and commerce between the United States and Great Britain. * * *

The second proposition, respecting the role d'équipage, as well as the first should be insisted on. Until the decree of the Directory of March 2, 1797, was passed, and we had felt its fatal effects, we had no idea of the meaning which the French applied to the phrase, role d'équipage. In the consular convention between the United States and France, article 9, which relates to deserters from vessels, the document is described in the French by the words *des registres du bâtiment ou rôle d'équipage*, and in the English part of the convention by the words "the registers of the vessel or ship's roll." And this paper was to be produced to the proper judge to prove a deserter to belong to the vessel in question. The law or usage of each nation was incontestibly to direct what was proper for its own vessels in this respect. If an American master claimed from a judge in France his warrant to arrest a deserter, he must have produced his "ship's roll," or what in the United States is called his shipping paper, which is a contract signed by all the persons composing a vessel's crew.

The propriety and necessity of a ship's roll was in the year 1790 sanctioned and enforced by an act of Congress.

And without such a written contract, the master besides being subjected to other disadvantages, could not claim his men when they deserted. This ship's roll every American master bound on a foreign voyage takes on board his vessel; and unquestionably every American vessel captured and condemned by the French for the want of a rôle d'équipage, has nevertheless been possessed of the ship's roll, just described; and it is the only list of the ship's crew which should ever have been contemplated by the United States as necessary for American vessels. There never was, indeed, any intimations on the part of France, from 1778, when the treaty of amity and commerce was made, until the passing of the decree of the Directory in March, 1797, that a rôle d'équipage, other than the ship's roll or shipping paper, would be required. It was then suddenly demanded; and the decree (like the law of January, 1798, respecting articles of the produce or manufacture of Great Britain), was instantly enforced, and became a snare to the multitudes of American vessels, which, for want of previous notice, would not have on board the documents in question, if their government should permit them to receive a document which they were under no obligation to produce. For it can not with any semblance of justice be pretended that the vessels of one nation are bound to furnish themselves with papers in forms prescribed by the laws of another. And if we resort to the treaty of 1778, or to the sea-letter, or passport annexed to it, on which letter the Directory pretended to found their decree concerning the rôle d'équipage, we shall see that these words are not to be found in either.

For the further purpose of showing the indignities, if not cruelty, with which our sailors and seamen abroad were treated by France, we make this further quotation from Mr. Pickering's instructions:

Prizes, as already observed, should be conducted into the ports of the party at war, or of an associate in the war, and there adjudicated by the regular tribunals. The French have conducted their prizes into neutral as well as belligerent ports; and, when there was no consul to try and condemn, leaving there the prizes, they have carried the papers to a distant place to find a French tribunal; and there, in the absence of the captured party, produced sentences of condemnation and sold the prizes. The same mode of obtaining condemnations has been uniformly practiced when they carried their prizes into the ports of an associate in the present war; but without waiting for the result of this farcical trial, it has been common to unlade and sell the cargoes as soon as they reached a port.

An unreasonable burthen is imposed on the captured in requiring them, if they, think proper to appeal to a higher tribunal, to find sureties in large penalties, which as strangers it is impossible to procure. This evil demands redress.

The crews are often stripped of their property, and even of their clothes and turned ashore without money or provisions. Such inhuman pillage is disgraceful to the nation which permits or does not, by adequate punishments, restrain it. The masters, supercargoes, other officers, and seamen should be allowed certain sums, the former to employ counsel to support their claims to the property captured, and all for their subsistence; and the seamen might have an adequate allowance of good provisions until they could find vessels returning to their own country. To admit masters and supercargoes into the courts to defend the property captured, when they have been previously stripped of their money and all means of providing the legal assistance essential to a right defense, is to tantalize with the semblance of justice, while the substance is denied.

And Mr. Pickering concludes his instructions as follows:

The following points are to be considered as ultimata:

- (1) That an article be inserted for establishing a board, with suitable powers, to hear and determine the claims of our citizens for the causes hereinbefore expressed, and binding France to pay or secure payment of the sums which shall be awarded.
- (2) That the treaties and consular convention declared to be no longer obligatory by act of Congress be not in whole or in part revived by the new treaty; but that all the engagements to which the United States are to become parties be specified in the new treaty.
- (3) That no guaranty of the whole or any part of the dominion of France be stipulated, nor any engagement made in the nature of an alliance.
- (4) That no aid or loan be promised in any form whatever.
- (5) That no engagement be made inconsistent with the obligations of any prior treaty; and as it may respect our treaty with Great Britain, the instruction herein marked 21 is to be particularly observed.
- (6) That no stipulation be made granting powers to consuls or others under color of which tribunals can be established within our jurisdiction, or personal privileges be claimed by Frenchmen incompatible with the complete sovereignty of the United States in matters of policy, commerce, and government.
- (7) That the duration of the proposed treaty be limited to twelve years at farthest, from the day of the exchange of the ratifications, with the exceptions respecting its permanence in certain cases specified under the instruction marked 30.

As a further continuation of a statement of facts relative to the situation, it now becomes necessary to cite four fundamental decrees of the French Government which violated the treaty provisions of 1778 of that power with us during the period complained of, a digest of the points at issue being as follows:

It having been stipulated between the parties in the treaty of 1778, that "free ships should make free goods," the French Republic, by the decree of May 9, 1793 (Doc. 102, p. 43), made liable to seizure the enemy's property which they found on neutral vessels.

The next one is the decree of July 2, 1796 (Doc. 102, p. 149), which provided—

That the flag of the French Republic will treat neutral vessels, either as to confiscation as to searches or capture, in the same manner as they shall suffer the English to treat them (Doc. 102, p. 149).

It will be remembered that the treaty of 1778 allowed the vessels of the allies to be visited by only two or three searchers at a time, the searching vessel to remain out of cannon shot.

Now, on the 2d of March, 1797 (Doc. 102, p. 160), the French Government made another decree, by which it largely extended the rule of contraband in violation of the limitations of the treaty of 1778, and on the 18th of January, 1798 (Doc. 102, p. 377), she made another decree by which the character of a vessel as neutral or enemy should be decided by the character of its cargo, and declared that all vessels carrying the products or manufactures of England or any of her provinces should be treated as enemy's vessels, and liable to condemnation; and adopted the same rule, also, as to all vessels which had entered an English port, which decree was, in express violation of the terms of the treaty of 1778 authorizing the vessels of either party to sail at liberty from one port to another of the enemy's or from an enemy's port to that of one of the allies.

AS TO THE ATTITUDE OF AMERICA.

In this connection special attention is called to the following circular letter of Mr. Jefferson to the merchants of the United States, cited from Wharton's International Law, page 606, and to the following extract from the message of President Washington:

I have it in charge from the President to assure the merchants of the United States concerned in foreign commerce or navigation that due attention will be paid to any injuries they may suffer on the high seas or in foreign countries contrary to the law of nations or to existing treaties, and that on the forwarding hither of well-authenticated evidence of the same, proper proceedings will be adopted for their relief. (Mr. Jefferson, Secretary of State, to Messrs. Duke & Co., August 31, 1793, 4 Jeff. Works, 31.)

This now assuring statement was followed up by another one equally so from the President himself.

Washington's message to Congress, December 5, 1793, after speaking of the unfriendliness of the French minister:

In the meantime I have respected and pursued the stipulations of our treaties according to what I judged their true sense, etc.

The vexations and spoliations understood to have been committed on our vessels and commerce by the cruisers and officers of some of the belligerent powers appeared to require attention. The proofs of these, however, not having been brought forward, the description of citizens supposed to have suffered were notified that on furnishing them to the Executive, due measures would be taken to obtain redress of the past and more effectual provisions against the future. (Vol. 4, Annals of Congress, p. 15.)

To show the importance of this circular letter and the extract from Washington's message, your committee call attention to the following comments of Senator Clayton, once Secretary of State, in his address delivered in the Senate of the United States, April 23 and 24, 1846. He said:

It appears this circular was carefully distributed among the merchants in all the sea-ports of the United States. It presents the extraordinary case, the only one I am aware of in the history of this Government, of a direct communication from the Executive to all concerned in foreign commerce and navigation. Its object, on its own face, is not merely to assure them of indemnity for the past—it does not assure them that due attention will be paid to any injuries they may have suffered, but it does, in the most solemn manner, pledge the faith of this Government to them “that due attention will be paid to any injuries they may suffer on the high seas, or in foreign countries, contrary to the law of nations or to existing treaties.” And it does solemnly further pledge the faith of the Government to all those who may thus hereafter suffer, that “on their forwarding (to the Department of State) well authenticated evidence of the same, the proper proceedings will be adopted for their relief.”

The spoliations on our commerce, and especially the French decree of the 9th of

May, prior to the date of this letter, had so greatly interrupted our foreign commerce that the Government saw that its important resources for the supply of revenues to carry on its necessary operations were nearly all cut off. The state of things was such, from the rapacity of Britain and the necessities of France, that an American vessel sailing from an American port might be said to be sure of making her way to her destined port only as a capture under the convoy of a French or British cruiser. could hardly be said that there was a possible chance of escaping capture.

To counteract the operation of this state of things, our own Government found it necessary, for its own revenue, to do something which should, in some degree, revive the prostrate commerce of the nation. Without some such effort it was palpable that the Treasury, deprived of its usual aliment from the duties on foreign imports, would be dangerously depleted. It would be of little avail to assure those merchants of indemnity who had already been ruined.

The promise of indemnity was, therefore, not extended to them. It was only offered to such as could be induced to venture again. True, the French decree of the 9th of May, 1793, promised indemnity as well for the past as for the future. Our Government did not choose to rely on the promise contained in that decree to indemnify those who had suffered; but it drew out the American ships which were still locked up in port or laid up in dock by what ought, under all the circumstances, to be regarded as a solemn promise by the Government to see to it that they should suffer nothing more from foreign aggression.

To show how great at this period was the importance of a revivification of our commerce and the necessity of filling up our depleting coffers, attention is called to the following extracts on this subject:

In the Annals of Congress 1799-1801, pp. 1263, 1264 (and in vol. 4, Jefferson's Works, p. 254), it appears that the duties on imports for 1798 were \$7,405,420.75; yet the ordinary expenses of the Government were less than \$7,000,000.

So Mr. Harper reported on April 30, 1800, in asking a new loan of \$3,500,000.

"The duties on imports and tonnage which in 1798 produced \$7,405,420, fell in 1799 to \$6,436,886, a diminution of nearly a million."

The committee attributed this diminution chiefly to the expensive depredations on our commerce which took place in 1796, 1797, and 1798, especially the two former, the full effect whereof was not felt in the revenue till 1799, because it was in that year that the duties on imports of 1798 became payable. If the revenues of imports fell off for several years at the rate of a million per year, even when our people had the promise of redress, it would have been certainly diminished onehalf without such promise.

The Government certainly gained \$15,000,000 through Jefferson's circular issued by order of the President.

Our envoys in 1798, protesting to Talleyrand, said: "A very essential object of the mission with which the undersigned are charged is to obtain a cessation of hostilities against the commerce of their country." (Ex. Doc. 102, Fr. Spols., p. 486.)

Secretary Pickering's report (Annals Fifth Congress, 1797-1799, Vol. III, p. 3541) says "the unjust and cruel depredations on American commerce had brought distress on multitudes, ruin on many of our own citizens, and occasioned a total loss of property to the United States (meaning its citizens) of probably more than \$20,000,000, besides subjecting our fellow-citizens to insults, stripes, wounds, torture, and imprisonment."

During the period in which these spoliations were committed there were four acts passed by Congress, the substance of which we give, in the language of Chase, J., in *Bas v. Tingey*, 4 Dall., page 328:

By the acts of Congress an American vessel is authorized: (1) To resist the search of a French vessel; (2) to capture any vessel that should attempt by force to compel submission to a search; (3) to recapture any American vessel seized by a French vessel; and (4) to capture any French armed vessel wherever found on the high seas. This suspension of the law of nations, this right of capture and recapture, can only be authorized by an act of the Government, which is in itself an act of hostility. But still it is a restraining or limited hostility, and there are undoubtedly many rights attached to a general war which do not attach to this modification of the powers of defense and aggression.

Judge Chase also states in *Bas v. Tingey*, referring to these statutes, that—

What, then, is the nature of the contest subsisting between America and France? In my judgment it is a limited partial war. Congress has not declared war in general terms, but Congress has authorized hostilities on the high seas by certain persons in

certain cases. There is no authority given to commit hostilities on land, to capture unarmed French vessels, nor even to capture French armed vessels lying in a French port; and the authority is not given indiscriminately to every citizen of America against every citizen of France, but only to citizens appointed by commissions or exposed to immediate outrage and violence. So far it is, unquestionably, a partial war; but, nevertheless, it is a public war on account of the public authority from which it emanates.

With this review, as your committee believe, of all the essential facts of the existing condition of affairs at and prior to the treaty with France of September 30, 1800, which terminated the spoliations complained of, your committee call attention to the following facts connected with the negotiations and leading up to the consummation of that treaty.

After vain efforts on the part of our envoys to consummate the negotiations on the basis of the ultimata of Mr. Pickering, and here calling attention to the one in regard to spoliation claims, to wit:

(1) That an article be inserted for establishing a board with suitable powers, to hear and determine the claims of our citizens for the causes hereinbefore expressed, and binding France to pay or secure payment of the sums which shall be awarded.

A convention with France was finally ratified on December 21, 1801, which convention was primarily agreed upon on September 30, 1800. As the best digest of the mode and manner in which the convention of September 30, 1800, was finally concluded and became binding upon both nations, your committee prefer to use the language of Judge Curtis, one of the associate justices of the Supreme Court, in his statement of facts in his edition of the reports and in the case of the United States *vs.* The Schooner *Peggy*, (1st Cranch, 107), a statement of facts that must have been adopted and acted upon by Chief-Justice Marshall, who delivered the opinion of the court in that case. Said statement of fact is as follows:

On the 21st of December, 1801, the convention with France was ratified.

* * * * *

On the 30th of September, 1800, this convention was signed by the respective plenipotentiaries of the two nations at Paris. On the 18th of February, 1801, it was ratified by the President of the United States, with the advice and consent of the Senate, excepting the second article, and with a limitation of duration of the convention to the term of eight years. On the 31st of July, 1801, the ratifications were exchanged at Paris, with a proviso that the expunging of the second article should be considered as a renunciation of the respective pretensions which were the object of that article.

This proviso being considered by the President as requiring a renewal of the assent of the Senate, he sent it to them for their advice. They returned it with a resolve that they considered the convention as fully ratified.

Whereupon, on the 21st of December, 1801, it was promulgated by a proclamation of the President.

For the purpose of still more clearly showing what the renunciation of the respective pretensions referred to by Judge Curtis are, we quote a note attached to our treaty with France in 1800—to be found on page 232 of the official copy of the public treaties of the United States, to wit:

The Senate of the United States did, by their resolution on the 3d of February, 1801, consent to and advise the ratification of the convention: provided, the second article be expunged, and that the following article be added or inserted: "It is agreed that the present convention shall be in force for the term of eight years from the time of the exchange of the ratifications."

Bonaparte, First Consul in the name of the French people, consented, on the 31st July, 1801, "to accept, ratify, and confirm the above convention, with the addition importing that the convention shall be in force for the space of eight years, and with the retrenchment of the second article, provided, that by this retrenchment the two States renounce the respective pretensions which are the object of the said article."

These ratifications, having been exchanged at Paris on the 31st of July, 1801, were again submitted to the Senate of the United States, which, on the 19th of December, 1801, declared that it considered the convention fully ratified, and returned it to the President for promulgation.

Attention is now called to article 2 of the said treaty as it was first adopted and before final ratification, to wit:

ARTICLE II.

The ministers plenipotentiary of the two parties not being able to agree at present respecting the treaty of alliance of 6th February, 1778, the treaty of amity and commerce of the same date, and the convention of 14th of November, 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time, and until they may have agreed upon these points the said treaties and convention have no operation, and the relations of the two countries shall be regulated as follows:

Article 2 having provided, as we see, for further negotiation upon the subjects of disagreement, namely, the treaty of alliance of February 6, 1778, and the indemnities mutually due or claimed, the decision of that article added to Napoleon's ratification, and concurred in by the Senate of the United States on the 19th of December, 1801, your committee consider wiped out and obliterated the obligations of the United States to France under the treaties of 1778, and at the same time in consideration therefor released to France the claims of her citizens.

This conclusion is fully sustained by the fact that our envoys had submitted the projet of a treaty. A counterprojet was returned on the 5th of September, 1800, by the French ministers, in the following laconic dispatch:

To the Ministers Plenipotentiary of the United States at Paris:

We shall have a right to take our prizes into the ports of America.

A commission shall regulate the indemnities which either of the two nations may owe to the citizens of the other.

The indemnities which shall be due by France to the citizens of the United States shall be paid for by the United States; and, in return for this, France yields the exclusive privilege resulting from the 17th and 22d articles of the treaty of commerce, and from the rights of guaranty of the 11th article of the treaty of alliance.

BONAPARTE.
C. P. C. FLEURIEU.
ROEDERER.

(Report 445, 2d sess. 25th Cong., p. 117.)

All the foregoing, your committee believe, constitutes a fair and substantial statement of the essential facts necessary to be understood before any correct conclusion can be reached as to the rights of the claimants against the Government of the United States. For the purpose of showing what was the opinion of cotemporaneous statesmen, as well as jurists and diplomats, who have made these spoliation claims special study as to the effect of the retrenchment of the second article by the Senate of the United States of the treaty as it was first signed, we now invite your attention to the following expression of opinion:

NAPOLEON'S OPINION.

It was the First Consul who gave life to the part of the treaty under discussion; the proviso containing the renunciation by the two states was written by him. He knew whether we were at war or at peace; above all he knew whether the claims were valid against France and just.

On page 129, vol. 2, of General Gourgaud's Memoirs of Napoleon, will be found remarkable words which should settle this controversy.

Dictating to his aid-de-camp at St. Helena in reference to the second article, which related to indemnities, Napoleon said :

The suppression of this article at once put an end to the privileges which France had possessed by the treaty of 1778 and annulled the just claims which America might have made for injuries done in time of peace.

This was exactly what the first consul had proposed to himself in fixing these two points as equiponderating each other. The words which follow are memorable. He adds :

Without this it would have been impossible to satisfy the merchants of the United States, and to banish from their memory the losses they had suffered.

CONTEMPORANEOUS AMERICAN OPINION.

In the House of Representatives United States, April 22, 1802. (Report No. 445, p. 6.) Mr. Giles made the following report :

The committee, to whom were referred the memorials of sundry merchants and traders of the United States, complaining of spoliations and depredations committed on their lawful commerce by French cruisers during the late European war, and praying compensation therefor, have considered the subject, and conceive it their duty to report the following state of facts :

The report recites the character of the depredations, and the pretexts under which they were made are recited as eight, and extended reference is made to the legislation of 1798, intended to terminate them, and then makes the following statement as to the action of the Senate on the treaty.

The Senate not having accompanied their advice for expunging the said second article with any explanation of their motive for the measure, it was understood, both by the Chief Consul and the American envoy then at Paris, that the object of expunging the said second article was the retrenchment of the respective pretensions of the two Governments, which were the object of the said second article; and, with an explanation to that effect, on the 31st of July, 1801, the Chief Consul ratified the said convention. The convention thus ratified was laid before the Senate by the President of the United States on its return from Paris; and, on the 19th day of December, 1801, the Senate resolved that they considered the said convention as fully ratified; and, in pursuance thereof, on the 21st of the same month, the President caused the said convention to be promulgated as it was originally ratified.

The memorials which were referred to Mr. Giles's committee are fully set out in the report of the Committee on Foreign Affairs, presented by Mr. Howard on January 20, 1838. (Report No. 45, p. 2.) Said memorials were as follows :

| From sundry merchants of— | Date. | From sundry merchants of— | Date. |
|---------------------------|---------|---------------------------|---------|
| | 1802. | | 1802. |
| Baltimore..... | Feb. 5 | Boston..... | Mar. 22 |
| Philadelphia..... | Feb. 8 | Norwich, Conn..... | Mar. 22 |
| Alexandria, D. C..... | Feb. 15 | New Haven, Conn..... | Mar. 22 |
| New York..... | Feb. 24 | Portsmouth, N. H..... | Mar. 27 |
| Port Royal, Va..... | Feb. 26 | Norfolk, Va..... | Mar. 30 |
| Hartford, Conn..... | Mar. 2 | Salem, Mass..... | Apr. 1 |
| Washington, N. C..... | Mar. 2 | Nantucket, Mass..... | Apr. 1 |
| Charleston, S. C..... | Mar. 7 | Portland, Me..... | Apr. 2 |
| New London, Conn..... | Mar. 9 | Newburyport, Mass..... | Apr. 2 |
| Middletown, Conn..... | Mar. 12 | Essex County, Va..... | Apr. 23 |

In the House of Representatives United States, February 18, 1807, General Francis Marion, of South Carolina, made the following report. After referring to the memorials and the report (of Mr. Giles) during the first session of the Seventh Congress, he says :

From a mature consideration of the subject, and from the best judgment your committee have been able to form on the case, they are of the opinion that this Govern-

ment, by expunging the second article of our convention with France of the 30th September, 1800, became bound to indemnify the memorialists for their just claims, which they otherwise would rightfully have had on the Government of France, for the spoliations committed on their commerce by the illegal captures made by the cruisers and other armed vessels of that power, in violation of the law of nations and in breach of treaties then existing between the two nations; which claims they were, by the rejection of the said article of the convention, forever barred from preferring to the Government of France for compensation. (Report 445, 2d September, Twenty-fifth Congress, p. 13.)

In 1826, Mr. Clay, in response to a resolution of the Senate, transmitted to Congress the documents in his Department relating to these claims (now known as "Doc. 102"), and makes use of the following language:

When that convention was laid before the Senate, it gave its consent and advice that it should be ratified, provided that the second article be expunged, and that the following article be added or inserted: "It is agreed that the present convention shall be in force for the term of eight years from the time of the exchange of the ratifications;" and it was accordingly so ratified by the President of the United States, on the 18th day of February, 1801; on the 31st of July, of the same year, it was ratified by Bonaparte, First Consul of the French Republic, who incorporated in the instrument of his ratification the following clause, as a part of it: "The Government of the United States having added to its ratification that the convention should be in force for the space of eight years, and having omitted the second article, the Government of the French Republic consents to accept, ratify, and confirm the above convention, with the addition importing that the convention shall be in force for the space of eight years, and with the retrenchment of the second article: *Provided*, That, by this retrenchment, the two States renounce the respective pretensions which are the object of said article."

The French ratification, being thus conditional, was nevertheless exchanged against that of the United States, at Paris, on the same 31st of July. The President of the United States, considering it necessary again to submit the convention, in this state, to the Senate, on the 19th day of December, 1801, it was resolved by the Senate that they considered the said convention as fully ratified, and returned it to the President for the usual promulgation. It was accordingly promulgated, and thereafter regarded as a valid and binding compact. The two contracting parties thus agreed, by the retrenchment of the second article, mutually to renounce the respective pretensions which were the object of that article. The pretensions of the United States, to which allusion is thus made, arose out of the spoliations, under color of French authority, in contravention to law and existing treaties. Those of France sprung from the treaty alliance of the 6th February, 1778, the treaty of amity and commerce of the same date, and the convention of the 14th of November, 1788.

Whatever obligations or indemnities from those sources either party had a right to demand were respectively waived and abandoned, and the consideration which induced one party to renounce his pretensions was that of the renunciation by the other party of his pretensions. What was the value of the obligations and indemnities so reciprocally renounced can only be matter of speculation. The amount of the indemnities due to citizens of the United States was very large, and on the other hand the obligation was great (to specify no other French pretensions) under which the United States were placed in the eleventh article of the treaty of alliance of 6th of February, 1778, by which they were bound forever to guaranty from that time the then possessions of the Crown of France in America, as well as those which it might acquire by the future treaty of peace with Great Britain; all these possessions having been, it is believed, conquered at or not long after the exchange of the ratifications of the convention of September, 1800, by the arms of Great Britain, from France.

The fifth article of the amendments to the Constitution provides: "Nor shall private property be taken for public use without just compensation." If the indemnities to which citizens of the United States were entitled for French spoliations prior to the 30th September, 1800, have been appropriated to absolve the United States from the fulfilment of an obligation which they had contracted, or from the payment of indemnities which they were bound to make to France, the Senate is most competent to determine how far such an appropriation is a public use of private property within the spirit of the Constitution, and whether equitable considerations do not require some compensation to be made to the claimants.

This report of Mr. Clay, as Secretary of State, transmitting, in response to the resolution of the Senate, the documents from his Department relating to the spoliations of our commerce by the French prior to July 31, 1801, bore date May 20, 1826. Up to this time five reports had been

made to Congress, whereof three were adverse, but from the time that those documents were printed no adverse report has ever been made by any committee of either house of Congress to whom the subject was referred. On February 8, 1827, Mr. Holmes made an elaborate report to the Senate, from which we make the following quotations directly bearing upon the points raised for discussion:

In the President's instructions to his envoys to France (Messrs. Ellsworth, Davie, and Murray) dated 22d October, 1799, he says: "This conduct of the French Republic would well have justified an immediate declaration of war on the part of the United States; but, desirous of maintaining peace, and still willing to leave open the door of reconciliation with France, the United States contented themselves with preparations for defense, and measures calculated to protect their commerce." The convention of 1800 was, moreover, not a treaty of peace, either in form or substance. The treaties of 1778 were the basis of the negotiation. The question between the negotiators was, not so much whether war had annulled these treaties, as whether they should be annulled by negotiation. They were expressly recognized in the second article of the convention; and that article being afterward expunged by mutual consent, these treaties thereby became null and void, by convention and not by war. (Report 445, Second session Twenty-fifth Congress, pp. 29 and 30.)

Senator Holmes further said:

France and the United States had reciprocal claims for infractions of the law of nations and existing treaties. Whether those of France were valid or not, they were matter of controversy which it was our interest to settle and adjust. Had the convention, as was proposed by our ministers, provided for reciprocal indemnities, and had commissioners been appointed to liquidate the claims and determine their validity, it is impossible to say what might have been the result. Certain it is that, in such case, the United States would never have laid their hands on the adjusted claims of their own citizens to discharge those which might be allowed to France or her citizens. Such an offset would be taking private property for public uses without just compensation, and is expressly prohibited by the Constitution. And how would such a case vary from that of the petitioners? It is now too late for the United States to question the justice and validity of these claims as against France. We have pressed them upon her as valid and just; she has admitted them and given us an equivalent to release them. We have released them; and though they were unliquidated, still they were capable of liquidation; and either their amount or the value which we obtained for their discharge would be equitably due to the claimants. (Report 445, 2d sess., 25 Congress, pp. 31 and 32.)

In the report of the select committee of the Senate of February 22, 1830, "from the pen of that eminent jurist, consul and statesman," Mr. Livingston (Report No. 445, second session Twenty-Fifth Congress), there occurs the following language, which is quoted here because it is a luminous exhibition of this entire situation:

Our Government, then, did not think the two nations in a state of war; and, in conformity with these instructions, the ministers, in one of their first communications in the negotiation, thus characterize the measures taken by the United States "With respect to the acts of the Congress of the United States, which the hard alternative of abandoning their commerce to ruin imposed, and which, far from contemplating a co-operation with the enemies of the Republic, did not even authorize reprisals on their merchantmen, but were restricted solely to the giving safety to their own, till a moment should arrive when their sufferings could be heard and redressed."

Mr. Livingston also further stated:

The same character is impressed on the whole negotiation—the settlement of indemnities for mutual injuries, and the modification of the ancient treaties to suit existing circumstances. Nowhere the slightest expression, on either side, that a state of war existed which would exonerate either party from the obligation of making those indemnities to the other. On the contrary, when it became necessary to urge that those treaties were no longer obligatory on the United States, the ministers rely not on a state of war, which would have put an end to them without any dispute, but on the act of Congress of the 7th July, 1798, annulling the treaties—an act which they themselves did not think, in a subsequent part of the negotiation, any bar to a recognition of the treaties so as to limit the operation of an intermediate one made with England.

The convention which was the result of these negotiations is not only in its form different from a treaty of peace, but it contains stipulations which would be dis-

graceful to our country on the supposition that it terminated a state of war, the restoration of prizes, and payment for vessels destroyed. Neither party considered then that they were in a state of war. Were they so in effect? War, from its nature, is indiscriminate hostility between the subjects of the belligerent powers. Hence it is universally acknowledged that the granting of letters of marque and reprisal does not produce a state of war, because it is limited. Here recourse was not even had to this measure. The right of capture was limited to that of armed vessels, which were dangerous to our commerce; looking to security for the future, but not to indemnity for the past. Besides, the convention was not a treaty of peace, because such a treaty is without limitation; while the convention, being limited to eight years, would, if we had been at war, have been a truce only for that period, at the expiration of which war must have been resumed, as of course, or been followed by a regular treaty of peace.

Mr. Webster, in his celebrated speech on granting indemnity to American citizens for French spoliations on American commerce prior to 1800, in the Senate of the United States January 12, 1835, says:

A letter appeared in a newspaper published at Albany, N. Y., in which I was charged with having a direct personal interest in these claims. The assertion, like many others which I have not felt it to be my duty to take any notice of, was wholly and entirely false and malicious. I have not the slightest interest in these claims, or any one of them. I have never been conferred with or retained by any one, or spoken to as counsel for one of them in the course of my life. No member of the Senate is more entirely free from any connection with these claims than I am. The question, sir, involved in these cases is essentially a judicial question. It is not a question of public policy, but a question of private right—a question between the Government and the petitioners. And, as the Government is to be the judge of its own case, it would seem to be the duty of the Government to examine the subject with the utmost good faith and the most solicitous desire to do justice.

And in same speech Mr. Webster, commenting upon the statement made by Mr. Clay as Secretary of State, in May, 1826, in transmitting Document 102 to the Senate, delivered the following remarks:

Before the interference of our Government with these claims, they constituted just demands against the Government of France. They were not vague expectations of possible future indemnity for injuries received, too uncertain to be regarded as valuable or to be esteemed property. They were just demands, and, as such, they were property. The courts of law took notice of them as property. They were capable of being devised, of being distributed among heirs and next of kin, and of being transferred and assigned, like other legal and just debts. A claim or demand for a ship unjustly seized and confiscated is property as clearly as the ship itself. It may not be so valuable or so certain, but it is as clear a right, and has been uniformly so regarded by the courts of law.

The papers show American citizens had claims against the French Government for six hundred and fifteen vessels unlawfully seized and confiscated. If this were so, it is difficult to see how the Government of the United States can release these claims for its own benefit with any more propriety than it could have applied the money to its own use if the French Government had been ready to make compensation in money for the property thus illegally seized and confiscated; or how the Government could appropriate to itself the just claims which the owners of these six hundred and fifteen vessels held against the wrongdoers, without making compensation, any more than it could appropriate to itself, without making compensation, six hundred and fifteen ships which had not been seized. I do not mean to say that the rate of compensation should be the same in both cases; I do not mean to say that a claim for a ship is of as much value as a ship; but I mean to say that both the one and the other are property, and that Government can not, with justice, deprive a man of either, for its own benefit, without making a fair compensation.

It will be perceived at once, sir, that these claims do not rest on the ground of any neglect or omission, on the part of the Government of the United States, in demanding satisfaction from France. That is not the ground. The Government of the United States, in that respect, performed its full duty. It remonstrated against these illegal seizures; it insisted on redress; it sent two special missions to France charged expressly, among other duties, with the duty of demanding indemnity. But France had her subjects of complaint also against the Government of the United States, which she pressed with equal earnestness and confidence, and which she would neither postpone nor relinquish, except on the condition that the United States would postpone or relinquish these claims. And, to meet this condition and to restore harmony

between the two nations, the United States did agree first to postpone and afterwards to relinquish these claims of its own citizens. In other words, the Government of the United States *bought off the claims* of France against itself by *discharging claims of our own citizens against France.*

SUMNER'S REPORT.

Your committee contents itself by quoting from the celebrated report of Charles Sumner, made to the Senate of the United States April 4, 1864, in support of these claims, the following extract upon the point that they are

CLAIMS ANCIENT, BUT NOT STALE.

(1) It is said that the claims are ancient and stale, and, therefore, should not be entertained. It is true that the claims are the most ancient of any now pending, and that they date from the very origin of our existence as a nation. But in this respect they do not differ from a revolutionary pension or a revolutionary claim. Down to this day there is a standing committee of the Senate entitled "Committee on Revolutionary Claims;" but if a claim which may be traced to the Revolution must be rejected for staleness, there can be little use for this committee. If these claims, after uninterrupted sleep throughout the long intervening period, were now, for the first time, revived, they might be obnoxious to this imputation. But as, from the beginning of the century, they have occupied the attention of Congress, and have been sustained by speeches, reports, and votes, it is impossible to say that they have been allowed to sleep.

The whole case was stated with admirable succinctness, as long ago as 1807, by Mr. Marion, of South Carolina, in the report of a committee of the House of Representatives, in the following words (*supra*).

He then cites an extract from the report made in 1807 by Mr. Marion, of South Carolina (*supra*), and adds: "Claims thus authoritatively stated at that early day could not be overcome by any sleep."

The following extracts are from 2 Wharton's International Law, pp. 718, 719:

In 1827, Senator Holmes reported that there had been "a partial war," but no "such actual open war as would absolve us from treaty stipulations. * * * It was never understood here that this was such a war as would annul a treaty." (19th Cong., 2d Sess., Senate Rep., Feb. 8, 1827-'28.)

Mr. Giles, reporting to the House of Representatives as early as 1802, called it a "partial state of hostility" between the United States and France.

Mr. Chambers reported to the Senate in 1828 that—

"The relations which existed between the two nations in the interval between the passage of the several acts of Congress before referred to and the convention of 1800 were very peculiar, but in the opinion of your committee can not be considered as placing the two nations in the attitude of a war which would destroy the obligations of previously existing treaties."

Mr. Livingston reported to the Senate in 1830 that—

"This was not a case of war, and the stipulations which reconciled the two nations was not a treaty of peace; it was a convention for the putting an end to certain differences. * * * Nowhere is the slightest expression on either side that a state of war existed which would exonerate either party from the obligations of making those indemnities to the other. * * * The convention, which was the result of these negotiations, is not only in its form different from a treaty of peace, but it contains stipulations which would be disgraceful to our country on the supposition that it terminated a state of war. * * * Neither party considered then they were in a state of war." (Rep. 4, 445.)

Mr. Everett made a statement in the House of Representatives on the 21st of February, 1835, in which he said:

"The extreme violence of the measures of the French Government and the accumulated injuries heaped upon our citizens would have amply justified the Government of the United States in a recourse to war, but peaceful remedies and measures of defense were preferred." And, after referring to the acts of Congress, he adds: "These vigorous acts of defense and preparation evincing that, if necessary, the United States were determined to proceed still further and go to war for the protection of their citizens had the happy effect of precluding a resort to that extreme measure of redress."

The following extracts are from 2 Wharton's International Law, page 726:

Mr. Pickering, Secretary of State under the first two Presidents, and who, above all others, was familiar with the situation and with the rights of the parties, said that we bartered "the just claims of our merchants" to obtain a relinquishment of the French demand, and that—

"It would seem that the merchants have an equitable claim for indemnity from the United States. * * * The relinquishment by our Government having been made in consideration that the French Government relinquished its demands for a renewal of the old treaties, then it seems clear that, as our Government applied the merchants' property to buy off those old treaties, the sums so applied should be re-imbursed." (Mr. Clayton's speech, 1846.)

Mr. Madison, as we have seen, said to Spain that the claims were admitted by France, and were released "for a valuable consideration," and he termed the transaction a "bargain."

Mr. Clay, in the Meade case, in which his opinion was given in 1821, five years prior to his report on French spoliations, said that while a country might not be bound to go to war in support of the rights of its citizens, and while a treaty extinction of those rights is probably binding, it appears—

"That the rule of equity furnished by our Constitution, and which provides that private property shall not be taken for public use without just compensation, applies, and entitles the injured citizen to consider his own country a substitute for the foreign power."

In this conclusion Chief-Justice Marshall strongly concurred, saying to Mr. Preston that—

"Having been connected with the events of the period, and conversant with the circumstances under which the claims arose, he was, from his own knowledge, satisfied that there was the strongest obligation on the Government to compensate the sufferers by the French spoliations." (Mr. Clayton's speech, 1846.)

Such are some of the opinions placed on record by the leading statesmen of that period as to the obligation of the United States to pay these claims, and their reasons therefor. To all of which we now add the following language of President Washington in his annual message in December, 1796, contradicting absolutely the idea of our even being at war or having been for three years preceding thereto.

While in our external relations some serious inconveniences and embarrassments have been overcome and others lessened, it is with much pain and deep regret I mention that circumstances of a very unwelcome nature have lately occurred. Our trade has suffered and is suffering extensive injuries in the West Indies from the cruisers and agents of the French Republic, and communications have been received from its minister here which indicate the danger of a further disturbance of our commerce by its authority, and which are in other respects far from agreeable.

It has been my constant, sincere, and earnest wish, in conformity with that of our nation, to maintain cordial harmony and a perfectly friendly understanding with that Republic. This wish remains unabated, and I shall persevere in the endeavor to fulfill it to the utmost extent of what shall be consistent with a just and indispensable regard to the rights and honor of our country, nor will I easily cease to cherish the expectation that a spirit of justice, candor, and friendship on the part of the Republic will eventually insure success. (President Washington, eighth annual address, December 1796.)

FRENCH VIEW.

Upon this position assumed by your committee there is a wealth of coequal authority from the diplomats and statesmen engaged in the negotiation, and without commenting upon them we content ourselves on this branch of the argument by citing the following extract taken from Document 102:

The letter of Talleyrand to Pichon, 4th of August, 1801 (Doc. 102, p. 698), says: "The suppression of this article releasing the Americans from all pretensions on our part relative to ancient treaties, and our silence respecting the same article leaving us exposed to the whole weight of the eventual demands of this Government relative to indemnities, it has become necessary that a form be introduced into the act of ratification in order to express the sense in which the Government of the Republic understood and accepted the abolition of the suppressed article."

Although these spoliations began in 1793, yet the French minister was not suspended from the exercise of his functions with our Government until October 7, 1796, when the French minister of foreign affairs notified Mr. Monroe, our minister at Paris, of that fact. (Doc. 102, p. 148.)

And Mr. Madison, who was Secretary of State at the time of the ratification, subsequently wrote Minister Pinckney that the claims—

From which France was released were admitted by France, and the release was for a valuable consideration in a correspondent release to the United States from certain claims on them. Madison to Pinckney, February 6, 1804, Doc. 102, p. 795.

Mr. Livingston, our minister to Paris, wrote the French minister of exterior relations on March 25, 1802:

You will recollect, sir, that the second article owed its birth to claims founded upon provisions contained in treaties previously existing between the two nations; that the Government of France was willing to admit these claims, provided the connections created by these were re-established. (Doc. 102, p. 712.)

And again Mr. Madison, on April 17, 1802, wrote the French minister as follows:

It will, sir, be well recollected by the distinguished characters who had the management of the negotiation that the payment for illegal captures, with damages and indemnities, was demanded on one side and the renewal of the treaties of 1778 on the other, and they were considered as of equivalent value, and that they only formed the subject of the second article,

which was the one rescinded by the Senate of the United States.

Minister De La Croix, October 7, 1796 (Doc. 102, p. 148), in transmitting to our Secretary of State the decree of 1796 of the French Government, says:

The ordinary relations subsisting between the two peoples in virtue of the conventions and treaties shall not on this account be suspended.

On the 18th of March, 1799 (Doc. 102, p. 380), the executive directory made decree containing this provision:

Considering that the fourth article of that decree (March 2, 1797), in what relates to the rôles d'équipages with which neutral vessels ought to be furnished, has had improper interpretations so far as concerns the rôles d'équipages of American vessels, and that it is time to do away the obstacles resulting therefrom to the navigation of vessels of that nation,

they declare that it was not understood that the navigation of the American vessels was to be affected otherwise than by the general ordinances in relation to neutrals.

In the answer of the French minister, to our envoys, date May 6, 1800 (Doc. 102, p. 590), in which they say that they are unable to understand why a different standard, namely, the law of nations instead of the treaties, should be applied to claims for depredations on American commerce by the French after the 7th of July, 1798, and that when they—

Hastened to acknowledge the principle of compensation (for spoliation) it was in order to give an unequivocal evidence of the fidelity of the French Government to its ancient engagements. Every pecuniary stipulation appearing to such expedient as a consequence of ancient treaties, and not as the preliminary to a new one.

So far as these claims and the obligation of the United States to pay to their citizens such of them as are allowed to be just and legal by the Court of Claims, it is not very material to consider whether the claims set up by France against the United States of a purely national character were valid under the treaties and the law of nations or not, but the following extract from 2 Wharton's International Law, 722, with the quota-

tions it contains, seems germane to the questions we are now considering :

There is a recognition of apparent justness in these demands found in the instructions to the Pinckney mission, who were directed, while urging our claims, to propose a substitute for the mutual guaranty "or some modification of it," as, "instead of troops or ships of war," "to stipulate for a moderate sum of money or quantity of provisions to be delivered in any future defensive war not exceeding \$200,000 a year during any such war" (2 For. Rel., 155), and Talleyrand, on the other side, told Mr. Gerry (June 15) that the Republic desired to be restored to the rights which the treaties conferred upon it, and through these means to assure the rights of the United States. "You claim indemnities," he said "we equally demand them; and this disposition being as sincere on the part of the United States as it is on its (the Republic) will speedily remove all the difficulties." (Doc. 102, p. 259.)

The French ministers had frequently mentioned the insuperable repugnance of their Government to surrender the claim to priority assured to it in the "commercial treaty of 1778," urging—

"The equivalent alleged to be accorded by France for this stipulation, the meritorious ground on which they generally represented the treaty stood, denying strenuously the power of the American Government to annul the treaties by a simple legislative act; and always concluding that it was perfectly incompatible with the honor and dignity of France to assent to the extinction of a right in favor of an enemy, and as much so to appear to acquiesce in the establishment of that right in favor of great Britain. The priority with respect to the right of asylum for privateers and prizes was the only point in the old treaty on which they had anxiously insisted, and which they agreed could not be as well provided for by a new stipulation." (Doc. 102, p. 608.)

The American envoys (July 23, 1800), in answer to the French arguments, reducing to writing the substance of two conferences, said (Doc. 102, p. 612):

"As to the proposition of placing France, with respect to an asylum for privateers and prizes, upon the footing of equality with Great Britain, it was remarked that the right which had accrued to Great Britain in that respect was that of an asylum for her own privateers and prizes, to the exclusion of her enemies; wherefore it was physically impossible that her enemies should at the same time have a similar right. With regard to the observation that by the terms of the British treaty the rights of France were reserved, and therefore the rights of Great Britain existed with such limitation as would admit of both nations being placed on a footing which should be equal, it was observed by the envoys of the United States that the saving in the British treaty was only of the rights of France resulting from her then existing treaty, and that treaty having ceased to exist, the saving necessarily ceased also, and the rights which before that event were only contingent immediately attached and became operative."

Admission of the continuing force of the old treaties might involve admission of France's national claims, and in any event would put her ministers into a most advantageous position, giving them, as consideration to be surrendered at her pleasure in the new negotiation what would then be a vested, existing, and acknowledged right to the guaranty, the alliance and the use of our ports. Placed in this position, France would be without incentive to action; she would start in the discussion of a new treaty with more surrendered to her at the outset than she had hoped to obtain at the conclusion, and all that she afterwards gave up would be by way of generous concession.

Whatever the law, whether the treaties were or were not abrogated by the act of Congress or the acts of parties, the American envoys were not permitted to admit the French contention, but were in duty bound to argue that the treaties were without continuing force. They followed this course, saying:

"A treaty being a mutual compact, a palpable violation of it by one party did, by the law of nature and of nations, leave it optional with the other to renounce and declare the same to be no longer obligatory. * * * The remaining party must decide whether there had been such violation on the other part as to justify its renunciation. For a wrong decision it would doubtless be responsible to the injured party, and might give cause for war; but even in such case, its act of public renunciation being an act within its competence would not be a void but a valid act, and other nations whose rights might thereby be beneficially affected would so regard it." (Doc. 102, p. 612.)

After further argument, they added that as it was the opinion of the French ministers that "it did not comport with the honor of France" to admit the American contentions, and at the same time be called upon for compensation, they offered "as their last effort" a proposition which suspended payment of compensation for spoiliations "until France could be put into complete possession of the privileges she contended

for, and at the same time they offered to give that security which a great pecuniary pledge would amount to for her having the privilege as soon as it could be given with good faith, which might perhaps be in a little more than two years; at any rate within seven." (*Ibid.*, 613.)

* * * * *

In August, after some delay and apparent friction, the Americans, saying that "while nothing would be more grateful to America than to acquit herself of any just claims of France, nothing could be more vain than an attempt to discourse to her reasons for the rejection of her own," made the following propositions (*ibid.*, 623-625):

"(1) Let it be declared that the former treaties are renewed and confirmed, and shall have the same effect as if no misunderstanding between the two powers had intervened, except so far as they are derogated from by the present treaty.

"(2) It shall be optional with either party to pay to the other within seven years 3,000,000 of francs in money or securities which may be issued for indemnities, and thereby to reduce the rights of the other as to privateers and prizes to those of a most favored nation. And during the said term allowed for option the right of both parties shall be limited by the line of the most favored nation."

* * * * *

The Americans made a counter proposal, renewing their offer of 8,000,000 francs to be paid within seven years, in consideration, that the United States "be forever exonerated of their obligation on their part, to furnish succors or aid under the mutual guaranty," and that the rights of the French Republic be forever limited to those of the most favored nation (*ibid.*, 629.) To this the French tersely answered (*ibid.*, 630):

"We shall have the right to take our prizes into your ports; a commission shall regulate the indemnities owed by either nation to the citizens of the other; the indemnities which shall be due by France to the citizens of the United States shall be paid for by the United States; in return for which France yields exclusive privileges resulting from the seventeenth and twenty-second articles of the treaty of commerce and from the rights of the guaranties of the eleventh article of the treaty of alliance."

Matters now again reached a halting point; neither side would yield; France acknowledged her real object to be to avoid payment of indemnity, while the United States, on the other hand, could not assent to her views as to the guaranty and use of ports. In considerable heat the ministers parted. (*Ibid.*, 632, 633.) The next day the Americans made another effort, because, as they wrote in their journal (*ibid.*, 634), "being now convinced that the door was perfectly closed against all hope of obtaining indemnities with any modifications of the treaty, it only remained to be determined whether, under all circumstances, it would not be expedient to attempt a temporary arrangement which would extricate the United States from the war of that peculiar state of hospitality in which they are at present involved, save the immense property of our citizens now pending before the council of prizes, and secure, as far as possible our commerce against the abuses of capture during the present war;" therefore they proposed (*ibid.*, 635) that as to the treaties and indemnities the question should be left open; that intercourse should be free; then, with suggestions as to property captured and not definitely condemned, and property which might thereafter be captured, they asked an early interview.

The French still insisted that a stipulation of indemnities involved an admission of the force of the treaties (*ibid.*, 635-637), and, after argument, proposed that the discussion of the indemnities, together with the discussion of article 11 of the treaty of alliance and articles 17 and 22 of the treaty of commerce "be postponed; but with the admission that the two treaties are, acknowledged and confirmed * * * as well as the consular convention of 1788;" that national ships and privateers be treated as those of the most favored nation; that national ships be restored and paid for, and that the "property of individuals not yet tried shall be so according to the treaty of amity and commerce of 1778, in consequence of which a rôle d'équipage shall not be exacted, nor any other proof which this treaty could not exact." So after months of negotiation the French ministers came back flat-footed upon the treaties as still existing, something which our representatives were forbidden by their instructions to admit. Nevertheless this proposal formed the text for discussion, and upon so slight a foundation was built the treaty of 1800.

And, finally, Dr. Wharton, in his work on International Law, page 727, says:

This view of the distinguished jurist and diplomatist [Chief-Justice Marshall] is sustained by forty-five reports favorable to these claims made in the Congress, against which stand but three adverse reports, all of which were made prior to the publication of the correspondence by Mr. Clay in 1826. Besides Marshall, Madison, Pickens, and Clay, the validity of the claims has been recognized by Clinton, Edward

Livingston, Everett, Webster, Cushing, Choate, Sumner, and many other of the most distinguished statesmen known to American history; and while opponents have not been wanting—among the most eminent of whom were Forsyth, Calhoun, Polk, Pierce, Silas Wright, and Benton—still the vast weight of authority in the political division of the Government has been strenuous in favor of the contention made here by the claimants.

At this point it naturally recurs to the mind of the seeker after information to inquire what opposition, if any, during the years gone by have been made to these spoliation claims, and the ground of that opposition. Probably the first distinguished man to oppose them was Silas Wright, of New York, in 1835; but your committee believe the strongest summary of the points in opposition to the justice and validity of these claims against the United States may be found in a speech made in the Senate of the United States in 1846, by Senator John A. Dix, of New York, which will be hereafter noticed, and which speech has furnished the text from that day to this for the groundwork for all opposition made to them, whether in the courts or in the halls of Congress. Two Presidents have vetoed bills for the relief of the claimants, namely, President Polk in 1846 and President Pierce in 1855. Your committee now propose to investigate the grounds of this opposition, but before we proceed to review the opposition of Senator Dix we beg to call attention briefly to the grounds upon which the two vetoes were respectively put. Without calling attention to all the reasons given by him, your committee will content itself with the following extract from President Polk's message as fairly representing his position:

This bill proposes to appropriate \$5,000,000, to be paid in land scrip, and provides "that no claim or memorial shall be received by the commissioners" authorized by the act, "unless accompanied by a release or discharge of the United States from all other and further compensation than the claimant may be entitled to receive under the provisions of this act." These claims are estimated to amount to a much larger sum than \$5,000,000, and yet the claimant is required to release to the Government all other compensation; and to accept his share of a fund which is known to be inadequate.

If these claims be well founded it would be unjust to the claimants to repudiate any portion of them, and the payment of the remaining sum could not be hereafter resisted. This bill proposes to pay these claims, not in the currency known to the Constitution, and not to their full amount.

Passed, as this bill has been, near the close of the session, and when many measures of importance necessarily claim the attention of Congress, and possibly without that full and deliberate consideration which the large sum it appropriates and the existing condition of the country demand, I deem it to be my duty to withhold my approval, that it may hereafter undergo the revision of Congress. I have come to this conclusion with regret. In interposing my objections to its becoming a law I am truly sensible that it should be an extreme case which would make it the duty of the Executive to withhold his approval of any bill by Congress upon the ground of its inexpediency alone. Such a case I consider this to be.

JAMES K. POLK.

WASHINGTON, August 8, 1846.

Your committee call attention to the fact that it seems as if the controlling motive that led to the veto was "inexpediency."

Nor can your committee make full extracts from the veto of President Pierce, but will content itself with the following extracts. Their justification (of opposition) consists in that which constitutes the objection to the present bill, namely, the absence of any indebtedness on the part of the United States.

The next step in this inquiry is, whether the act declaring the treaties null and void was ever repealed, or whether by any other means the treaties were revived so as to be either the subject or the source of national obligation. The war, which has been described, was terminated by the treaty of Paris of 1800, and to that instrument it is necessary to turn to find how much of pre-existing obligations between the two Governments outlived the hostilities in which they had been engaged. By the second article of the treaty of 1800, it was declared that the ministers plenipo-

tentiary of the two parties not being able to agree respecting the treaties of alliance, amity, and commerce of 1778, and the convention of 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time, and until they shall have agreed upon these points the said treaties and convention shall have no operation.

When the treaty was submitted to the Senate of the United States the second article was disagreed, and the treaty amended by striking it out and inserting a provision that the convention then made should continue in force eight years from the date of ratification, which convention thus amended was accepted by the First Consul of France with the addition of a note explanatory of his construction of the convention, the two states renounce the respective pretensions which were the object of the said article.

It will be perceived by the language of the second article, as originally framed by the negotiators, that they had found themselves unable to adjust the controversies on which years of diplomacy and of hostilities had been expended, and that they were at last compelled to postpone the discussion of those questions to that most indefinite period, a "convenient time." All, then, of these subjects which was revived by the convention was the right to renew, when it should be convenient to the parties, a discussion which had already exhausted negotiation, involved the two countries in a maritime war, and on which the parties had approached no nearer to concurrence than they were when the controversy began.

The obligations of the treaty of 1778 and the convention of 1788 were mutual and estimated to be equal. But however onerous they may have been to the United States, they had been abrogated, and were not revived by the convention of 1800, but expressly spoken of as suspended until an event which could only occur by the pleasure of the United States. It seems clear, then, that the United States were relieved of no obligation by the retrenchment of the second article of the convention; and if thereby France was relieved of any valid claims against her, the United States received no consideration in return; and that if private property was taken by the United States from their own citizens it was not for public use. But it is here proper to inquire whether the United States did relieve France from valid claims against her on the part of the citizen of the United States, and thus deprive them of their property.

The complaints and counter-complaints of the two governments had been that treaties were violated, and that both public and individual rights and interests had been sacrificed. The correspondence of our ministers engaged in negotiations, both before and after the convention of 1800, sufficiently proves how hopeless was the effort to obtain full indemnity from France for injuries inflicted on our commerce from 1793 to 1800, unless it should be by an account in which the rival pretensions of the two governments should each be acknowledged and the balance struck between them.

It is supposable, and may be inferred from the contemporaneous history as probable, that had the United States agreed in 1800 to revive the treaties of 1778 and 1788, with the construction which France had placed upon them, that the latter Government would, on the other hand, have agreed to make indemnity for those spoiliations which were committed under the pretext that the United States were faithless to the obligations of the alliance between the two countries.

Hence the conclusion, that the United States did not sacrifice private rights or property to get rid of public obligations, but only refused to reassume public obligations for the purpose of obtaining the recognition of the claims of American citizens on the part of France.

And, again :

Before entering on this it may be proper to state distinctly certain propositions which, it is admitted on all hands, are essential to prove the obligations of the Government.

First. That at the date of the treaty of September 30, 1800, these claims were valid and subsisting as against France.

Second. That they were released or extinguished by the United States in that treaty, and by the manner of its ratification.

Third. That they were so released or extinguished for consideration valuable to the Government, but in which the claimants had no more interest than any other citizens.

The President then makes an argument upon the treaties, and sums up the result of his argument in this language :

This review of the successive treaties between France and the United States has brought my mind to the undoubting conviction, that while the United States have, in the most ample and the completest manner, discharged their duty toward such of

their citizens as may have been at any time aggrieved by acts of the French Government, so also France has honorably discharged herself of all obligations in the premises towards the United States. To concede what this bill assumes would be to impute undeserved reproach both to France and to the United States.

In the light of this history, hereinbefore given, it has been urged that these claims are not valid claims against either the Government of France or the United States, because it is alleged that they arose when war was existing between the two nations, and that therefore they are essentially "war claims," and being such neither Government is liable to pay them.

This contention is answered by what has been above presented, which may be summarized as follows :

I.

THE TREATIES.

As will appear from what has been already quoted, the United States guarantied to France her possessions in the West Indies and certain port privileges.

II.

In consideration of this, France agreed to guaranty to the United States independence, which with the aid of France we gained.

III.

These being the treaty stipulations existing between the two Governments, France complained that the United States were not in good faith carrying out on their part these treaty stipulations and, in 1793 began these depredations on our commerce.

The contention on the part of France that the United States were not carrying out their treaty obligations was intensified when she learned of the Jay treaty of 1794, by which England was accorded rights in our ports that France considered herself to be, and as your committee believe was, entitled to exclusively under the treaties of 1778, and thereafter these depredations became more flagrant from year to year until the treaty of 1800 practically ended them.

The contention now is that what France did in that regard and what was done by the United States in resistance of this conduct of France constituted a state of war.

We have already referred to the French decrees bearing on this subject, and need not repeat them here.

IV.

DID THE UNITED STATES REGARD A STATE OF WAR AS EXISTING.

These depredations being flagrant and continuing, acts of Congress were passed which it is necessary to consider, and the provisions of which are sufficiently indicated in the opinion of Marshall, C. J., now referred to. (*Seeman v. Talbot*, 1 Cr. 1.)

In that case Chief-Justice Marshall says, "to determine the real situation of America in regard to France the acts of Congress are to be inspected."

He adds :

The whole powers of war being, by the Constitution of the United States, vested in Congress, the acts of that body can alone be resorted to as our guides in this inquiry. It is not denied, nor in the course of the argument has it been denied, that Congress may authorize general hostilities, in which case the general laws of war apply to our situation ; or partial hostilities, in which case the laws of war, so far as they actually apply to our situation, must be noticed.

To determine the real situation of America in regard to France, the acts of Congress are to be inspected.

"The first act on this subject passed on the 28th of May, 1798, and is entitled, An act more effectually to protect the commerce and coasts of the United States."

This act authorizes any armed vessel of the United States to capture any armed vessel sailing under the authority, or pretense of authority, of the Republic of France, which shall have committed depredations on vessels belonging to the citizens of the United States, or which shall be found hovering on the coasts for the purpose of committing smch depredations. It also authorizes the recapture of vessels belonging to the citizens of the United States.

On the 25th of June, 1798, an act was passed "to authorize the defense of the merchant vessels of the United States against French depredations."

This act empowers merchant vessels, owned wholly by citizens of the United States, to defend themselves against any attack which may be made on them by the commander or crew of any armed vessel sailing under French colors, or acting, or pretending to act, by or under the authority of the French Republic, and to capture any such vessel. This act also authorizes the recapture of merchant vessels belonging to the citizens of the United States. By the second section such armed vessel is to be brought in and condemned for the use of the owners and captors.

By the same section recaptured vessels belonging to the citizens of the United States are to be restored, they paying for salvage not less than one eighth nor more than one-half of the true value of such vessel and cargo.

On the 28th of June an act passed, "in addition to the act more effectually to protect the commerce and coasts of the United States." This authorizes the condemnation of vessels brought in under the first act, with their cargoes, excepting only from such condemnation the goods of any citizen or person resident within the United States, which shall have been before taken by the crew of such captured vessel.

The second section provides, that whenever any vessel or goods the property of any citizen of the United States or person resident therein, shall be recaptured, the same shall be restored, he paying for salvage one-eighth part of the value, free from all deductions.

On the 9th of July another law was enacted "further to protect the commerce of the United States."

This act authorizes the public armed vessels of the United States to take any armed French vessel found on the high seas. It also directs such armed vessel, with her apparel, guns, etc., and the goods and effects found on board, being French property, to be condemned as forfeited.

The same power of capture is extended to private armed vessels.

The sixth section provides, that the vessel or goods of any citizen of the United States, or person residing therein, shall be restored, on paying for salvage not less than one-eighth, nor more than one-half, of the value of such recapture, without any deduction.

The seventh section of the act for the government of the navy, passed the 2d of March, 1799, enacts, "that for the ships or goods belonging to the citizens of the United States, or to the citizens or subjects of any nation in amity with the United States, if retaken within twenty-four hours, the owners are to allow one-eighth part of the whole value for salvage," and if they have remained above ninety-six hours in possession of the enemy one-half is to be allowed.

On the 3d of March, 1800, Congress passed an act providing for salvage in cases of recapture.

This law regulates the salvage to be paid "when any vessels or goods, which shall be taken as prize as aforesaid, shall appear to have before belonged to any person or persons permanently resident within the territory and under the protection of any foreign prince, government, or state in amity with the United States, and to have been taken by an enemy of the United States, or by authority, or pretense of authority, from any prince, government, or state, against which the United States have authorized, or shall authorize, *defense* or reprisals."

These are the laws of the United States, which define their situation in regard to France, and which regulate salvage to accrue on recaptures made in consequence of that situation.

* * * * *

It is, I believe, a universal principle, which applies to those engaged in a partial as well as those engaged in a general war, that where there is probable cause to believe the vessel met with at sea is in the condition of one liable to capture, it is lawful to take her and subject her to the examination and adjudication of the courts.

The *Amelia* was an armed vessel commanded and manned by Frenchmen. It does not appear that there was evidence on board to ascertain her character. It is not, then, to be questioned but that there was probable cause to bring her in for adjudication.

The recapture then was lawful.

It is true that a violation of the law of nations by one power does not justify its violation by another; but that remonstrance is the proper course, and this is the course which has been pursued. America did remonstrate, most earnestly remonstrate, to France against the injuries committed on her; but, remonstrance having failed, she appealed to a higher tribunal, and authorized limited hostilities. This was not violating the law of nations, but conforming to it. (*Talbot v. Seeman*, 1 Cr; 41).

In the case of *Bas v. Tingy*, 4 Dallas, each of the justices gave a separate opinion, and Mr. Justice Chase says:

Congress is empowered to declare a general war, or Congress may wage a limited war; limited in place, in objects, and in time. If a general war is declared, its extent and operations are only restricted and regulated by the *jus belli*, forming a part of the law of nations; but if a partial war is waged, its extent and operation depend on our municipal laws. What, then, is the nature of the contest subsisting between America and France? In my judgment, it is a limited, partial war. Congress has not declared war in general terms, but Congress has authorized hostilities on the high seas by certain persons in certain cases. There is no authority given to commit hostilities on land; to capture unarmed French vessels, nor even to capture French armed vessels lying in a French port; and the authority is not given indiscriminately to every citizen of America against every citizen of France, but only to citizens appointed by commissions or exposed to immediate outrage and violence. So far it is, unquestionably, a partial war; but, nevertheless, it is a public war, on account of the public authority from which it emanates.

In the same case Mr. Justice Washington says

But hostilities may subsist between two nations more confined in its nature and extent, being limited as to places, persons, and things, and this is more properly termed imperfect war, because not solemn, and because those who are authorized to commit hostilities act under special authority, and can go no farther than to the extent of their commission. * * * It is a war between the two nations, though all the members are not authorized to commit hostilities such as in a solemn war, where the government restraining the general power.

In addition to this, by section 3 of the act approved February 9, 1799, it was provided that no French ship, armed or unarmed, should "be allowed an entry or to remain within the territory of the United States unless driven thither by distress of weather or in want of provisions." And if, contrary to this, any such were found, they "shall be required to depart without unnecessary delay."

This act unmistakably and irresistibly proves that the nations were not at war with each other at that late date, February 9, 1799. It never was heard of that in time of open public war the armed vessels of one belligerent were permitted to enter the ports of another for repairs and provisions.

It is plain from what we have above presented that neither France nor the United States regarded this as a state of general war; that these acts of Congress were purely defensive in their character; that there was that state of limited hostilities on the part of the United States which authorized our merchantmen to arm for defense against the assaults of the French privateers; which authorized our armed vessels to capture French armed vessels that were hovering on our coasts and committing depredations on our merchantmen.

The whole policy of the United States was to protect from actual immediate injuries in specific cases, not to attempt to get compensation for the class of cases now being presented for the consideration of Congress. These cases did not come within this limited war. There was no effort or purpose to procure compensation for injuries in the shape of reprisals, nor were these losses ever compensated for directly or indirectly by reprisals or otherwise, but they are as yet wholly uncompensated for; the whole scope and purpose of the legislation contained in the said four acts being to prevent France from continuing her depredations, and not to secure indemnity for past depredations.

Those whose judgment have led them to oppose the validity of these claims have fallen back upon the argument that they were war claims, because France had made war on the United States. This argument seems to have originated with General Dix, of New York, in the speech hereinbefore alluded to. The answer to this argument is readily found in the history of these events as furnished in the official public documents relating to them. The argument of General Dix, repeated in recent debates, rests upon the assumption that France had made war upon the United States, and he begins this alleged war with the violation of the treaty of 1778 by the French decree of May 9, 1793, authorizing the seizure of enemy's property on board of neutral vessels, and those of 1796, March 2, 1797, and January 18, 1798.

Mr. Dix's argument was, in substance, this: That France by the decrees above referred to had, "on her own separate action and against our earnest, persevering remonstrances and by a system of flagrant depredations on our commerce, abrogated the treaties of 1778." He further contended that the acts of Congress, passed in 1798, authorizing the arming of merchantmen for the purposes of defense and authorizing the arming of vessels to capture French armed vessels on the high seas, and especially the act of 7th of July, 1798, by which it was declared that the United States were thenceforth freed from the obligations of the treaties, constituted war on the part of the United States. His argument is virtually this: That France was at war with the United States from 1793 to 1798 by virtue of the decrees and the acts of spoliation, and that Congress had placed the United States in the attitude of war with France by the enactment of the laws of 1798, hereinbefore referred to. Upon this theory of the case France was at war with the United States from 1793 to 1798, but the United States was not at war with France, and that the two nations were at war with each other after the 7th of July, 1798.

It is certain that no act of Congress was passed until, in 1798, when our merchantmen were authorized to arm themselves for defensive purposes, and that prior to that time the United States had contented themselves with simply protesting against the spoliations, and through diplomatic means was endeavoring to stop them. Up to the 7th of July, 1798, this alleged war was an altogether one-sided one, and it seems to your committee plain that the condition up to the 7th of July, 1798, was not a state of war, and in this we are supported by the asseverations of both nations constantly repeated and insisted upon, as is shown by what we herein have quoted. This disposes of the position taken by Mr. Dix up to the 7th of July, 1798, and as to the period intervening between July 7, 1798, and the making of the treaty of 1800, your committee consider that both nations insisted that there had been no war, and treated with each other upon that basis.

All of these and other decrees were in derogation of the treaty, but it is a curious argument and certainly a fallacious one, that one nation

can, by violating a treaty with and committing depredations on the commerce of another, and in the fact that it has done so, find the proof of a war which released it from all claims for indemnity based upon these depredations. Now, as stated elsewhere herein, there are two fundamental questions in these cases. First, were they valid claims for indemnity as against France? and, secondly, has the United States become liable for them? The Dix argument of a war by France relates of course only to the first proposition, viz, the liability of France to make indemnity, and in this aspect of the case it is very material to see how France herself dealt with this question of her liability to make indemnity for these depredations and spoliations. The extracts quoted from 2 Wharton's International Law, 722, and Document 102, in this report, under the head of "French View," can leave no doubt that the French ministers freely admitted their obligations to make indemnity for these spoliations. After frequent admissions of their liability and oft-repeated propositions to make compensation for spoliations and treaty rights the basis of settlement, they sought to narrow the scope of the negotiations by sharply presenting the alternative of the ancient treaties with indemnities, or a new treaty without indemnities.

The entire negotiation was conducted on their part on the basis of the recognition of their liability, and a corresponding demand for compensation for the treaty rights of France which had been withheld. They expressly and repeatedly repudiated the existence of war between the two Republics, and especially and emphatically asserted that there had been none on the part of France. They insisted throughout that whatever "misunderstanding" had existed had not amounted to war. So that it is left to American statesmen to evolve this far-fetched idea of a war on the part of France as an argument by which to avoid responsibility to their fellow-citizens for claims for these losses which our Government had used in the settlement of its own liabilities for failure to keep and observe its treaty obligations.

In his report to the House, of February 21, 1835, Mr. Edward Everett referred to this subject as follows:

In the progress of the negotiation, it was maintained, on the part of France, in the strongest terms, that war did not exist. Witness the following passage from the dispatch of the French envoys of 11th August, 1800: "In the first place, they will insist upon the principle already laid down in their former note, viz, that the treaties which united France and the United States are not broken; that even war could not have broken them; but that the state of misunderstanding which has existed for some time between France and the United States, by the act of some agents, rather than by the will of the respective Governments, has not been a state of war, at least on the side of France." The misunderstanding was terminated, not by a treaty of peace, but by a convention for terminating certain differences. (Report 445, 2d Sept., 25 Cong., p. 121.)

Again he says:

It was the opinion of one of the ablest jurists and best patriots which the country ever produced (Chief-Justice Marshall) that these claims are just. "If," said he, "the envoys [of which he was one] renounced them, or did not by an article in the treaty, save them, the United States would thereby become liable for them to her citizens." (Mr. Everett's statement, Rep. No. 445, H. of R., 2d sess., 25th Cong., p. 128.)

And again he says:

From the beginning to the end of the negotiations France admitted the general justice of the claims and professed her readiness to make indemnity to our citizens.

This the American Government declined to accept, because the French coupled with it the demand for the restoration of the treaties, thinking it hard, in the language of our envoys, to indemnify for violating engagements unless they can thereby be restored to the benefit of them. (Mr. Everett's statement, Rep. No. 445, H. of R., 2d sess., 25th Cong., p. 128.)

We submit that this disposes of the entire groundwork of Mr. Dix's argument. This is further shown by the fact that condemnations were not made on the ground that there was war, but on the ground of alleged violation of neutrality and alleged failure to comply with the treaty. Mr. Russell, of Massachusetts, so ably presented this that we quote from his speech as follows (p. 8052, Record, 1st sess., 50th Cong.):

Under the act of 1885, looking to the final settlement of these claims, our State Department sent to France and to the French West Indies for copies of the original papers made in these condemnations of our vessels.

I have before me copies of the papers, in the original French, of two of these condemnations. Here we have first the American schooner *Peggy*, taken as a prize by the French privateers *Le Patroite* and *Les Trois Amis*, and carried into the French port of Guadeloupe, and here are the grounds of her condemnation made by the prize court.

The House will notice that this was in 1800.

Spoilation had been going on for seven years, and if there had been war existing the French officers would surely have known it, but there is no allusion whatever in these papers to a condition of war existing between the French Government and the Government of the United States.

The condemnation could have been made on the ground of war, if any war existed, and the American vessel would have been a good prize for her French captors; but, instead of putting it upon that ground, they simply make the evasive and far-fetched declaration that the sealed letter which this vessel bore was not signed by the proper naval officers, and also that the captain, who acknowledged that he was originally a subject of Great Britain, but who had been naturalized for more than twenty years, did not happen to have his naturalization certificate about him.

The condemnation sets forth that she had not the crew-list required according to regulation established by the French Government as necessary for American ships, and also that there was not sufficient evidence on board that the cargo actually belonged to the men who had shipped it from Norfolk, Va., which was a clumsy attempt to establish a violation of neutrality.

What has been above presented shows conclusively that, in the opinion of the Supreme Court of the United States, there was in law no general war; that, in view of the subject, as expressed by both Governments, there was in fact no such war; and there seems to be scarcely room left for any argument that these claims are in any sense "war claims."

The real character of the claims has already been described in quotations made in a previous part of this report. They are for wanton captures by French privateers of the vessels and cargoes of our citizens in flagrant violation of treaty stipulations and of the rules of international law, because of which our Government asserted, and France during the negotiations admitted, her liability to make compensation, as hereinbefore appears.

Mr. Jefferson, by his circular letter, and President Washington in his message, gave assurance to our citizens that they would be compensated for these losses as valid claims against France.

THE FAILURE OF THE UNITED STATES TO KEEP HER TREATY OBLIGATIONS.

But France was not without her grievances against our Government. As we have before shown, the United States had agreed to guaranty to France her West India possessions and to grant her exclusive port privileges. Both of these covenants were broken—the one as to port privileges deliberately by the Jay treaty of 1794 with England, and this was obviously done because it was deemed more profitable to break it than to keep it. Evidently the advantages of commercial intercourse with England in our then condition were considered as outweighing such demand as France might have because of failure to keep that treaty agreement.

For these breaches France claimed indemnity as a nation against the United States as a nation. Did not the United States admit that liability by surrendering them? Your committee so consider.

BOTH NATIONS AGREED.

It thus appears that the two nations were not in dispute over the real situation.

(1) The United States asserted and France admitted the liability of the latter to our citizens for these spoiliations.

(2) France asserted, and the United States, as your committee consider, acquiesced in the position that they were liable to France for these infractions of these treaties.

THE TREATY OF 1800.

This was the situation which led to the treaty of 1800. That treaty was negotiated in large part with a view to the settlement of these respective claims. The effort has been made to show that this was a treaty of peace, but as there was no war, it is difficult to comprehend how it could be a treaty of peace. Since there was no war, it could be nothing else than what both parties claimed it to be—an adjustment of the grievances above alluded to, the existence of which were admitted by both parties.

HOW THESE GRIEVANCES WERE SETTLED.

In the light of the multitude of reports made to the Senate and House in which the methods by which these respective claims were adjusted and finally settled have been most ably and exhaustively presented, it seems useless to do more here than to state the fact that the acknowledged claim of France as a nation against the United States as a nation was paid by the latter with the acknowledged claims of her citizens against France.

Thus private property was taken for a public use, and thus these claimants have an unanswerable demand against the United States, which payment has never been made. (Articles of Amendments to Constitution of the United States.)

So far, therefore, as these are claims made by the representatives of parties who suffered actual loss, it seems to your committee that the duty of the United States to pay them is beyond reasonable dispute; some of these have been reported to Congress by the Court of Claims and are now pending for final action.

UNDERWRITERS AND INSURANCE COMPANIES.

The court has also reported claims in favor of underwriters and insurance companies, and since it has been argued that these are less meritorious, they will now be separately considered.

Underwriting.—At that period much of the insuring was done by underwriters and not by insurance companies. The method was briefly this: A broker would write a policy, in which a named vessel was to be insured for a specific sum at a named rate and for a named voyage. Underneath this individuals would write their names, opposite which the portion of the sum insured taken by each would be subscribed; each underwriter received his proportionate share of the premium paid and each paid the amount he subscribed in case of loss; and all the

rights of the insured were transferred in fact, or by operation of law, to these underwriters, whenever a loss was paid. (Hall & Long R. R. Co., 13 Wallace, 367; *Gracie vs. New York Insurance Company*, 8 Johnson, 245; *The Potomac*, 105, U. S., 634; *Randall vs. Cochran*, 1 Vesey, 98.)

It is at least difficult, if not impossible, to find any reason why, if the owner who lost his uninsured ship can be compensated for that loss, his neighbor who guaranteed against loss and paid the loss is not also entitled to such compensation.

The doctrine of subrogation that places the party who paid in the place of him to whom the payment was made is too familiar and too obviously founded on natural justice to demand argument in its support.

But the right to be thus substituted is a contract right. In consideration of the insurance the insured agrees that the insurer shall have the premium paid and the right to any hope of recovery in case of loss.

This hope of recovery—*spes recuperandi*—is a property right, no matter what form it may take, whether it may be what may be left of the vessel or any right of reclamation. It is a property right which, by contract, belongs to the insurer.

In the language of Lord Cockburn:

Whatever rights accrue to the owner * * * pass to the underwriter the moment he satisfies the policy.

This doctrine is supported by numerous authorities of the highest character. (*North of England Ins. Co. vs. Armstrong*, L. R., 5 Q. B., and cases *supra*.)

Every underwriter, therefore, who paid a loss acquired this property right the instant the loss was paid, and from that moment he had a valid claim against France, precisely such a claim—a property right—as the owner of the vessel would have had if he had lost his vessel without insurance. All of these claims—these property rights—of the underwriters were given up to France in consideration of the extinguishment of the claim of France against the United States, and thus the United States used this individual property for a public purpose; and therefore the rights of these underwriters are in no way different from the rights of the uninsured owners—the one is no less an obligation binding on the United States than the other. In both cases the United States took property that belonged to the citizen and used it to pay their own indebtedness.

Insurance companies.—The case is not different but is precisely the same, where the insuring or underwriting was done by insurance companies. Whenever a loss was paid by an insurance company the property right above mentioned vested in that company, and these property rights were likewise used along with the others above mentioned for the same purpose, viz, the extinguishment of a national obligation.

We conclude this branch of the subject by calling attention to the summary of authorities found in *Holbrook vs. United States*, 21 Court of Claims Reports, pages 438-441:

In capture and condemnation there can be no *spes recuperandi*, for the vessel, so far as the owners are concerned, has disappeared, and there exists no reasonable prospect that anything will at any time be recovered. "There is no existing hope," to use Chancellor Kent's language, "of recovery in this case (of capture), * * * and an abandonment * * * would have been as idle as if the property had perished at sea" (*Gracie v. The N. Y. Ins. Co.*, 8 Johnson, 245); and since the time of Lord Mansfield the capture of a neutral merchantman upon the high seas, especially when followed by confiscation, amounts to total loss and abandonment. (*Goss v. Withers*, 2 Burr., 683; 4 Cranch, 29; 4 Dallas, 421; 3 Wheat., 183; 1 Wash. C. C., 145; 3 Mass., 238.)

In the case of the *Vermont*, in which the opinion already cited was delivered by Chancellor Kent, the vessel had been captured, the capture declared illegal by the French tribunal; pending an appeal by the captors, the cargo was delivered to the consignees upon bond given by them larger in amount than the insurance. The appeal was heard and the vessel with her cargo condemned, whereupon insured sued upon the policy after expressly refusing to abandon. The court, holding abandonment to be unnecessary, shows that any claim against the captors could only be prosecuted by the National Government, which, if compensation were obtained, would become trustee for the party having the equitable title to the re-imbursement, and that this party is the insurance company, "if they should pay the amount of the bond;" that is, the insurer would be entitled to what he paid. This is in accordance with the general doctrine of insurance law laid down by Lord Cockburn in the following language:

"I take it to be clearly established in the case of a total loss that whatever remains of the vessel in the shape of salvage, or whatever rights accrue to the owner of the thing insured and lost, they pass to the underwriter the moment he is called upon to satisfy the exigency of the policy and he does satisfy it." (North of England I. S. Ins. Co. v. Armstrong, L. R., 5 Q. B., 244; see also *Propeller Monticello v. Mollison*, 17 How., 152; *Mercantile Marine Ins. Co. v. Clark et al.*, 118 Mass., 288; *Shaw v. United States*, 8 C. Cls. R., 488; *Dozier v. United States*, 9 id., 342.)

As long ago as 1 Vesey, sr., Lord Hardwicke, in case of an illegal seizure, held that the person originally sustaining the loss was the owner, but, after satisfaction made to him, the insurer, so that if compensation be made for the seizure the assured stands as trustee for the insurer in proportion to what he has paid. (*Randal v. Cochran*, 1 Ves., sen., 97.)

In one New York case (*United Ins. Co. v. Scott*, 1 Johns., 106) the court held that right of ownership in a captured vessel passed to the underwriters upon abandonment and payment of total loss; in another similar case (*Robinson v. United Ins. Co.*, 1 Johns., 592) the insurers were sustained in their endeavor to bring trover against the owners for a cargo captured, abandoned, and paid for, while the case of *Gracie* held abandonment useless; and in the Chinese indemnity claims this court ruled (*Hubbell v. United States*, 15 C. Cls. R., 546) that underwriters who had paid losses sustained by reason of the capture and plunder of a vessel and cargo by Chinese pirates could participate in an indemnity fund paid therefor.

In some cases, after payment of the insurance, the assured executed an instrument called a cession, in the nature of an assignment, by which they transferred to the insurer all rights to the property and to any recovery on account of it; but the insurer's right is not based upon that instrument, as the Supreme Court held in *Comegys v. Vasse* (1 Peters, 193), where the absence of an assignment was set up against the underwriter. The court said that—

"The law gives to the act of abandonment, when accepted, all the effects which the most accurately-drawn assignment would accomplish."

So Justice Washington held in *Hurtin v. The Phoenix Insurance Co.* (1 Wash. C. C., 400):

"If a cession, as it is called, had been necessary to make the abandonment complete, there might be something in the argument; but this is not the case. The abandonment amounts to a legal transfer of the rights of the insured, so as to enable the underwriters to pursue, to manage, and to recover the property as effectually as if a regular deed had been made to them. * * * When it comes to be made a question whether the abandonment is invalid, if the cession is refused, we must say it is not; because such an instrument is not necessary to pass the right of the insured to the underwriters."

The authorities are entirely united on this point, and there can be no doubt of the validity of claims made by insurers who have paid loss by illegal capture, condemnation, and confiscation of vessels included in the description of the act of January 20, 1885.

PRECEDENTS FOR SUCH PAYMENTS.

We are not without precedents in this respect. By the treaty of 1819, with Spain, provision was made for the payment by Spain of spoiliations by France during the same period (1793–1800) on our commerce. Spain was held to be liable, because France used her ports in connection with these captures. The captures were made by France during the same period, and under the same treaty stipulations, and under precisely the same circumstances.

In the settlement of these claims nineteen insurance companies were paid by the United States from the millions of money kept back by it

from Spain on the Florida purchase for losses paid on account of the respective vessels insured by them respectively, and upon the ground above stated, to wit: that, having paid the loss, the company acquired a property right which had been used for its own purposes by this Government. (Senate Ex. Doc. 74, 49th Cong., 1st sess., pp. 25, 26, 27, 28, 29, and 30.)

Attention is again specially called to the fact that these depredations were committed by France during the same period and under the same circumstances. These are excluded by the act of Congress of January 20, 1885, from the jurisdiction of the Court of Claims, for the reason that they were paid under this treaty with Spain.

As above stated, the losses of insurance companies were paid under that treaty, so far as the property was carried into Spanish ports; not paid on any basis of profit or loss, but each loss was compensated for.

It would be indefensible inconsistency to say that one company might be paid its losses for French spoliation when the property was carried into the ports of Spain, and another company could not be paid for a precisely similar loss because the property was carried into the ports of France; that the companies should be paid under the one treaty and not under the other, the losses being exactly similar.

Another precedent is found in the treaty with France of 1831. By that treaty, provision was made for payment of claims that occurred after the treaty of 1800. In this instance fifty-two insurance companies were paid (Sen. Doc. 74, 49th Cong., 1st sess., pp. 41 to 92, inclusive) for property lost, on account of which they paid the insurance, and this was done because the United States used the property right held by the companies for public purposes.

It is therefore confidently submitted that the right of underwriters and insurance companies to be paid is, as a matter of law, irresistible, and by the precedents above mentioned it is impossible for the United States to refuse payment without inconsistency bordering on dishonor.

CONCLUSION ON THIS BRANCH OF THE SUBJECT.

These claims, although old, are not stale. They are old because the United States has neglected to do by its citizens what they had a right to expect. They are not stale because the claimants, generation after generation, and continuously in almost every Congress since they arose, have been pressing them for payment. Their justice has been recognized as above shown, many times by reports made by committees composed of men of most conspicuous ability; but their justice was never more forcibly recognized than by Congress in the enactment of the law of January 20, 1885, which gave to the Court of Claims jurisdiction to consider them.

By that act the claimants were invited to submit their claims to that court.

But while Congress referred to the court the question whether France was liable primarily as the spoliator, and, secondarily, whether the United States had become liable in the stead of France, this was not merely a reference of abstract questions; it was a reference of cases upon which severally, year by year, the court was to report to Congress, as these cases were tried, thus making manifest the intention to recognize them as valid if the court should so decide. This is made still more apparent when it is considered that the act further provided for the sending abroad of a commissioner to procure evidence to be used alike by the claimants and by the Government, which further in-

dicates that it was not a decision alone of an abstract question, but the trial of cases, which was contemplated in the reference. In pursuance of this provision of the jurisdictional act Congress has made large appropriations for the purpose of getting evidence from abroad, and sent Hon. James O. Brodhead, of Missouri, as a commissioner to Paris for this purpose (see 2 Wharton's Digest of International Law, 715); and subsequently sent Mr. Somerville P. Tuck as a commissioner to the various ports of France into which the vessels had been carried for the purpose of procuring evidence; and afterwards sent Mr. Tuck to the West India Islands for the purpose of searching for proofs, all which proofs have been used alike for the benefit of the claimants and the Government.

While the act does not say so in terms, but reserves to Congress the right finally to act in the premises, yet there is in this act a clear implication of the intention of Congress to pay them; and on the faith of this the claimants have proceeded in that court.

The questions involved have been elaborately discussed in that court; every conceivable argument against the liability of France and against the liability of the United States, has been advanced and urged by the counsel for the Government.

The court, chosen by Congress as the tribunal to which to submit these questions, has decided against the contention of the Government. The opinions rendered are conspicuous for their ability and research, and they are in harmony, as we have seen, with the views of our most eminent statesmen, jurists, and diplomats, who have been required, in the discharge of public duties, to consider them. There have been five opinions delivered on the subject of French spoiliations by the Court of Claims. They are *Gray vs. United States*, 21 C. of C., 340; *Holbrook vs. United States*, 21 C. Cls. R., 435; *Thomas Cushing vs. United States*, 22 C. of C., 2; *Hooper vs. United States*, 22 C. of C., 408.

The jurisdictional act of January 20, 1885, in which these claims are referred to the Court of Claims, excludes three important classes of claims:

(1) All "such claims as were embraced in the convention between the United States and the French Republic, concluded on the 30th day of April, 1803."

(2) All "such claims growing out of the acts of France as were allowed and paid in whole or in part under the provisions of the treaty between the United States and Spain, concluded on the 22d day of February, 1819."

(3) All "such claims as were allowed, in whole or in part, under the provisions of the treaty between the United States and France, concluded on the 4th day of July, 1831."

This leaves under the act only those claims "which arose prior to July 31, 1801," and which were directly involved in the treaty which was "concluded" with France September 30, 1800, and "the ratifications of which were exchanged on the 31st of July, 1801."

To these restrictions of the statute the court has added an important and material one, as follows:

The court holds that all of those cases which arose after September 30, 1800, and before July 31, 1801, a period of ten months when these spoiliations were most flagrant, were valid claims as against France, but that the United States are not liable for them on the ground and for the reason that they were not released for a specific consideration.

Another limitation which cuts off a great many of the claims as heard before the court, is that it has decided that the treaties of 1778

were abrogated by the act of Congress of July 7, 1798, and that between that date and September 30, 1800, the claimants are not entitled to the benefit of the treaties, but must stand on the less liberal rules of the general law of nations towards neutrals.

On an examination of the reports of these findings by the Court of Claims to Congress, it will appear that the court has considered as to each case two fundamental questions.

(1) Whether the claim was valid as against France in consequence of her prize court having decided adversely to the provisions of the treaty of 1778 (if the condemnation was prior to July 7, 1798), or against the law of nations (if the condemnation was between July 7, 1798, and September 30, 1800).

(2) And, secondly, whether the claim was released to France by our Government in consideration of a release by France of claims which France held against the United States.

So that, if the court reached a conclusion adverse to the claimant on the first question, it proceeded no further. But if it reached one in favor of the claimant upon the first question then it took up and considered the second one.

If it reached a conclusion on the second one adverse to the claimant, that also was the end of the case. But if both questions were answered favorably from the evidence in favor of the claimant, then the case has been favorably reported to Congress for the amount of loss as shown by the proofs.

The most scrupulous care has characterized the investigation of the court in these cases, and to avoid all possibility of erroneous judgments the court has required that all petitions for claims based upon any one seizure and condemnation should be heard together, and in this way antagonistic interests have been adjudicated, and the court afforded the fullest information in possession of the Government and of the conflicting claimants, upon which to reach its judgment, as will appear from a glance at the face of the reports made by the Court of Claims to Congress.

An examination of these reports of findings will disclose another important fact, namely, that all the condemnations of the French prize court are based upon some alleged ground of violation of neutrality, chiefly grounds prescribed by French municipal regulations. So that it is literally true that in no case has the French court ever alleged that the United States were enemies of France, and condemned property on the ground of their property being "enemy's property," but up to the very last condemnation made they charge and allege that our vessels, being neutrals, were as such violating some belligerent right of France as claimed under French laws.*

The basis of the liability of the United States for these claims is the indisputable fact, fully established before the Court of Claims as a fact, that these claims of her citizens were released by our Government to France in consideration of a release to the United States by France of claims which the Republic of France had against the United States as a nation. These claims were private property used for public purposes, as decided by the court, and the citizens or their personal representatives are entitled to just compensation.

Congress by an overwhelming majority passed the act of January 20, 1885, referring the parties to the Court of Claims and inviting them to establish their rights before that tribunal. They accepted that invitation and have pursued the remedy prescribed by Congress for four years, at great expense to themselves.

It has involved suing out letters of administration *de bonis non* on the estates of the original sufferers; the identification by deposition of the estates administered with the person who suffered the loss; the preparation and printing of petitions, prayers for findings of fact, briefs, and summary statements; the expense of obtaining (in many instances from abroad) and copying evidence of the losses and condemnations.

When Congress opened its court to the claimants and thus invited them to avail themselves of the opportunity of establishing their claims in pursuance of the mode provided by the statute, it was a moral assurance that Congress would pay those established before the court, unless something in the decision showed that they should not be paid.

Congress knew that the claims were old when it passed the act, and it knew just as well that spoliations were finally stopped by force.

It knew also that seven-eighths to nine-tenths of these claims originated prior to the use of any force.

Nothing of this kind can now be fairly assigned as a reason or excuse for the non-payment of these claims.

Is there anything to be found in the decisions themselves why the claims allowed by the court should not be paid?

No such suggestion has or can be made, for the court has greatly limited the extent of the claims over which Congress gave it jurisdiction. It has also applied to the claims a more rigid test or standard than a liberal construction of the spirit of the jurisdictional act would well have warranted. It has thrown around its investigation the most careful safeguards to avoid excessive or unwarrantable allowances.

The question of liability has been most fully and elaborately argued and reargued on behalf of the United States, and yet the court has decided that there are some of these claims for which the United States is liable; some of them only, for the number has been greatly limited and the amounts greatly reduced.

The situation which to-day confronts Congress is whether this limited number, so reduced in amount, which have been found by the Court of Claims to be valid legal liabilities of the United States, shall be paid, or whether they shall be repudiated.

After having thus submitted these claims to the court as an aid to Congress in the discharge of the political duties of Congress, and after having thus induced these claimants to prosecute their claims before that tribunal, it would seem to be too late for Congress now to be further contesting the obligation of the United States to pay them. It is reasonably certain that if the court had decided against the liability Congress would have accepted that decision as conclusive.

In the light of what has been presented herein, your committee are of opinion that this conclusion reached by the court should be accepted as a final determination of the liability of the United States to pay these claims.

APPEAL TO THE SUPREME COURT.

It has been suggested that the Supreme Court should pass upon the questions involved in these cases and sift them, but the opinions filed by the Court of Claims and their reports (printed) in each case show that they are carefully examined and thoroughly sifted now. The Supreme Court, too, on appeals from the Court of Claims does not examine at all into the facts, but taking the findings of fact by the Court of Claims very much as a special verdict of a jury, they pass upon the questions of law involved, so that the reasons chiefly assigned for such an appeal could not be accomplished. There is a more material and fundamental reason, however, why such an appeal could not be allowed.

By the Constitution (article 3), "the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as a Congress," etc. By the second section it is provided that "The judicial power shall extend to all cases in law and equity arising," etc. It is evident that these findings of the court for these spoliation claims do not constitute cases "in law or equity," and the Supreme Court can not be given jurisdiction of them. They are political questions; they grow out of international obligations and the liability of the United States for its diplomatic and international transactions. The judgments of the Court of Claims discuss this matter so far as its own jurisdiction extends very conclusively and show that they are able to consider these cases under the jurisdictional act, whereby they are referred to them solely as assisting Congress, the political branch of the Government, in the discharge of its duties.

Your committee does not deem it necessary, however, to go into this branch of the question more at length, for the reason that it is fully considered in the learned report of the Committee on the Judiciary, submitted by Mr. Collins on February 9, 1888 (Report No. 359, first session Fiftieth Congress), and the argument on the subject is very ably presented in the array of authorities presented by Hon. George D. Wise, in his speech in regard to these claims, during the first session of the present Congress (Congressional Record, 8562).

AMOUNT OF THE CLAIMS.

Of course it is impossible to state the amount of the claims, for the simple reason that no one can tell how many of the petitions pending will be dismissed and how much the amount asked for in them will be reduced. Enough, however, is known to enable your committee to say with great confidence that the statement heretofore made that they aggregate thirty millions is an exaggeration. In the report of the Attorney-General, page 6, dated December 1, 1886, he says: "There have been filed to date 2,150 cases, amounting to about \$12,000,000." It is thought that there will be about 500 more, making a total of about 2,600 cases and aggregating upward of \$15,000,000. As the time for filing the petitions expired on the 20th of January, 1887, this statement was about seven weeks prior to the expiration of the time. During these seven weeks it seems, however, that there were 3,419 petitions filed; and up to a few days ago, there were 3,292 of these petitions in which no evidence whatever had been filed. It has been stated that the great majority of the cases filed after the report of the Attorney-General were general petitions merely, to save the jurisdiction of the court in case evidence should be found applicable to them. The commissioners appointed by the Government being at that time in search of evidence, the circumstances seem to corroborate this statement. What is certain, however, is that up to date the Court of Claims has tried 282 petitions on 142 vessels; that the aggregate amount prayed for in these cases was \$3,346,726.26, and that the total amount allowed by the court was \$1,604,681.99, and that in addition thereto petitions amounting to \$8,380,000 have been dismissed for want of any evidence whatever, naming no vessel, but being "general" petitions, such as are referred to above. There have also been eight similar petitions naming no amount dismissed for the same reason. All whereof will appear by reference to the appendix hereto annexed, furnished your committee by the Court of Claims.

Your committee, therefore, report back to the House the several findings of the Court of Claims reported to Congress, and recommend that an appropriation be made for their payment.

APPENDIX.

A.

List of cases acted upon by the Court of Claims, showing number of case, name of vessel and master, amount claimed, and amount allowed by the court.

| Vessel. | Master. | No. | Claimed. | Allowed. | Certified to Congress. |
|--------------------------------|------------------------|------|-------------|--------------|------------------------|
| Ship Light Horse | Hoff | 161 | \$28,825.00 | \$7,318.66 | Jan. 25, 1889. |
| | | 5409 | 25,000.00 | Dismissed. | |
| Schooner Emily | Emmerson | 1781 | 12,860.00 | 12,860.00 | Jan. 30, 1889. |
| | | 2072 | 5,222.12 | 3,822.12 | |
| Ruby | Bartlett | 976 | 2,567.45 | 2,150.79 | Jan. 25, 1889. |
| | | 783 | 3,000.00 | 2,000.00 | |
| | | 955 | 3,001.07 | 2,692.22 | |
| | | 1248 | 3,021.07 | 2,674.22 | |
| | | 4336 | 300.00 | 100.00 | |
| | | 4407 | 400.00 | 400.00 | |
| | | 2057 | 1,000.00 | 1,000.00 | |
| Brig Betsey | | 967 | 47,335.00 | Dismissed .. | |
| Juno | | 1209 | 13,804.00 | do | |
| Brig Betsey | | 1376 | 42,063.00 | do | |
| Ship Elizabeth | | 975 | 7,500.00 | do | |
| Brig Betsey | | 1377 | 24,738.00 | do | |
| Brig Juno | | 969 | 31,129.00 | do | |
| Ship Eliza | | 970 | 39,086.00 | do | |
| Maria | | 971 | 29,232.00 | do | |
| Sloop Hope | Merrell | 2776 | 3,000.00 | do | |
| Brig William | Lewthwaite | 2777 | 7,320.00 | do | |
| | | 2771 | 3,000.00 | do | |
| Brig Martha and Mary | Smith | 2778 | 8,000.00 | do | |
| Ship Ariel | Jacob Coates | 1866 | 7,000.00 | do | |
| Ship Mary | Phillips | 2779 | 25,000.00 | do | |
| | | 2761 | 10,000.00 | do | |
| Schooner Fanny | Benjamin Lander | 2574 | 367.50 | do | |
| Ship Favorite | Charles Barnard | 2574 | 245.00 | do | |
| Schooner Little Fanny | Peter Fosdick | 2576 | 343.00 | do | |
| Snow Harmony | William Marshall | 2577 | 245.00 | do | |
| Brig Aurora | J. Phillips, jr. | 2578 | 245.00 | do | |
| Brig Polly | Job Palmer | 2579 | 245.00 | do | |
| Ship Louisa | James Seller | 2580 | 245.00 | do | |
| Ship Ann and Mary | Thomas Hunt | 2581 | 367.50 | do | |
| Brig Rosetta | Isaac Isaacs | 2181 | 12,000.00 | do | |
| Ship Stratford | P. Shaw | 2755 | 3,320.94 | do | |
| Brig Lucky | Vredenburgh | 2757 | 36,000.00 | do | |
| Schooner Hibernia | Tilton | 2759 | 3,000.00 | do | |
| Brig Juno | | 1408 | 31,300.00 | do | |
| Schooner Hope | | 1395 | 25,034.00 | do | |
| Schooner Industry | B. Hawkes | 3968 | 7,000.00 | 7,000.00 | Dec. 5, 1887. |
| Schooner John | John C. Blackler | 1012 | 11,000.00 | 9,152.90 | Do. |
| | | 3694 | 5,250.00 | 3,741.70 | |
| Brig Anna | Peter Bingham | 516 | 20,932.94 | 14,700.00 | Do. |
| Brig Dolly | Arnold Higgins | 562 | 6,419.00 | 6,031.51 | Do. |
| Ship John | Levi Putnam | 4 | 59,000.00 | 45,318.66 | |
| | | 12 | 4,500.00 | 3,500.00 | Do. |
| | | 778 | 2,453.00 | 1,993.00 | |
| Schooner Active | Jos. Barker | 1 | 12,716.18 | Dismissed. | Do. |
| Brig Volante | Thomas Barker | 10 | 14,533.81 | 11,356.65 | Do. |
| Schooner Helena Plumsted | Thomas Carry | 495 | 9,506.00 | 9,506.00 | Do. |
| Schooner Sally | Benjamin Russell | 7 | 9,505.00 | 8,597.08 | |
| | | 3301 | 869.95 | 869.95 | Do. |
| | | 1250 | 816.67 | Dismissed. | |
| | | 1363 | 816.67 | Dismissed. | |
| Ship Port Mary | Thomas Hewitt | 3214 | 36,000.00 | 35,280.00 | |
| Do | do | 3713 | 13,807.50 | 6,833.00 | Dec. 3, 1888 |
| Do | do | 3713 | 13,807.50 | 6,833.00 | |

List of cases acted upon by Court of Claims, etc.—Continued.

| Vessel. | Master. | No. | Claimed. | Allowed. | Certified to Congress. |
|------------------------------|-----------------------|------|-------------|--------------|------------------------|
| Brig Virginia | Mark Butts..... | 779 | \$21,830.00 | \$19,762.00 | Dec. 3, 1888 |
| | | 1829 | 4,768.58 | 3,934.33 | |
| | | 2628 | 4,191.67 | 79.09 | |
| | | 2628 | | 79.09 | |
| | | 4383 | 500.00 | Dismissed. | |
| Schooner Elizabeth | Thomas Trott | 518 | 600.00 | 600.00 | Do. |
| Sloop Endeavor | James Miller | 108 | 10,581.91 | 5,452.39 | Dec. 8, 1888 |
| Brig Mary | Thomas Boyle | 1536 | 3,587.66 | 2,207.00 | Dec. 19, 1888 |
| | | 1695 | 11,000.00 | 11,000.00 | |
| Brig Venus..... | A. Smith | 2569 | 3,909.61 | Disallowed. | |
| | | 4361 | 6,250.00 | | |
| | | 280 | 2,133.97 | | |
| | | 1777 | 1,200.00 | | |
| | | 4273 | 2,750.00 | | |
| | | 3804 | 3,112.00 | | |
| | | 5475 | 463.42 | | |
| | | | | | |
| Brig Two Sisters..... | Joseph Hubbart..... | 348 | 11,194.17 | 5,638.25 | Do. |
| | | 348 | 11,194.17 | 5,638.25 | |
| | | 999 | 10,000.00 | 10,000.00 | |
| Schooner Richard and Edward. | E. G. Evans | 6 | 3,780.00 | 3,430.00 | Dec. 12, 1888. |
| Schooner Eutaw | William Smith..... | 5130 | 10,612.50 | 3,139.00 | |
| | | 951 | 13,656.00 | 1,344.50 | Do. |
| | | 739 | 11,760.00 | 11,760.00 | |
| Schooner Trial | Daniel Ropes | 1860 | 10,000.00 | 10,000.00 | Do. |
| Schooner Sisters..... | John Bradish..... | 899 | 17,688.00 | 11,867.00 | |
| | | 1579 | 5,237.75 | 4,097.00 | Do. |
| | | 1579 | | | |
| | | 1862 | 4,500.00 | 4,410.00 | Dec. 3, 1888. |
| Schooner Hero | T. Hammett..... | 2073 | 8,996.66 | 8,475.00 | |
| Schooner Frederick | J. G. Clark..... | | 106,940.24 | 43,660.00 | Do. |
| | | 1397 | | 21,830.00 | |
| | | 1397 | | 21,830.00 | |
| | | 1397 | | 21,830.00 | |
| Ship Friendship..... | John Rogers..... | 2173 | 24,566.00 | 24,566.00 | Do. |
| | | 2382 | 18,150.00 | 13,519.00 | |
| Brig Sally | J. Crowdhill | 103 | 13,030.00 | 8,926.00 | May 3, 1888. |
| Ship Betsy | Josiah Obear | 2 | 40,550.00 | 14,141.13 | |
| | | 3792 | 21,645.28 | 7,214.08 | Dec. 3, 1888. |
| | | 1999 | 2,350.68 | 1,705.68 | |
| | | 2494 | 449.98 | 126.00 | |
| | | 842 | 17,500.00 | 5,500.00 | |
| | | 1894 | 1,000.00 | 1,000.00 | |
| | | 3443 | 600.00 | Not allowed. | |
| Schooner Betsey | William Dennis | 2660 | 8,728.00 | 6,334.00 | Dec. 5, 1887. |
| Schooner Jane | J. Snow | 167 | 400.00 | Dismissed. | Dec. 3, 1888. |
| Ship Raven | Thomas Riley | 3897 | 24,500.00 | 18,792.00 | June 4, 1888. |
| | | 2856 | 12,301.00 | 12,301.00 | |
| Schooner Industry | Benjamin Hawker | 132 | 18,573.00 | 6,555.00 | Dec. 6, 1886. |
| | | 258 | 4,000.00 | 4,000.00 | |
| | | 1218 | 1,000.00 | 1,000.00 | |
| Schooner Delight | S. Curtis | 505 | 7,059.00 | 6,302.00 | Dec. 6, 1886. |
| | | 249 | 6,000.00 | 6,000.00 | |
| | | 252 | 500.00 | 500.00 | |
| | | | | | |
| Schooner Little Peg | William Auld | 155 | 5,960.50 | 5,960.50 | Dec. 6, 1886. |
| Ship Eliza..... | Odell | 964 | 4,505.00 | 4,339.00 | Jan. 25, 1889. |
| | | 970 | 4,000.00 | Dismissed. | |
| | | 1008 | 332.00 | 332.00 | |
| | | 1576 | 21,646.40 | 12,341.40 | |
| | | 2034 | 1,000.00 | 166.00 | |
| | | 2473 | 500.00 | 83.00 | |
| | | 3498 | 3,751.60 | 3,429.60 | June 4, 1888. |
| | | 5028 | 500.00 | 83.00 | |
| Brig Susan..... | Major Lines..... | 2943 | 3,346.24 | 1,827.48 | |
| | | 2943 | | 628.72 | |
| | | 2943 | | 628.72 | |
| | | 2943 | | 628.72 | |
| | | 2943 | | 628.72 | |
| | | 2943 | | 314.10 | |
| | | 2901 | 3,822.00 | 3,822.00 | Dec. 5, 1887. |
| Ship Eliza..... | John Borrowdale | 735 | 4,900.00 | 4,900.00 | |
| | | 5529 | 7,200.00 | Dismissed. | |
| Schooner Industry | J. J. Knapp | 3 | 6,620.31 | 5,882.67 | Do. |
| Brig Eliza..... | Daniel Francis | 843 | 7,625.17 | 7,008.15 | Do. |
| | | 2789 | 825.75 | 325.75 | Do. |
| Brig William..... | Benj. Henderson | 11 | 1,000.00 | Dismissed. | |
| Brig Washington..... | Goodridge | 2762 | 3,500.00 | Dismissed. | Oct. 29, 1888. |
| Ship Olive Branch..... | McConnell..... | 2763 | 1,400.00 | Dismissed. | |
| | | 2765 | 12,000.00 | | |
| Schooner Polly..... | Small | 2764 | 15,000.00 | | |
| Schooner Hiram..... | Gardner | 2766 | 2,000.00 | | |
| | | 2760 | 938.00 | | |
| Sloop Hope..... | Wilcocks | 2767 | 3,000.00 | | |

List of cases acted upon by Court of Claims, etc.—Continued.

| Vessel. | Master. | No. | Claimed. | Allowed. | Certified to Congress. |
|-----------------------------|-------------------------|------|------------|--------------|------------------------|
| Schooner Duly Ann..... | J. McNemara..... | 2768 | \$8,500.00 | ----- | |
| Ship Hercules Courtenay .. | Simpson..... | 2769 | 982.87 | ----- | |
| Brig Jason..... | Smith..... | 2770 | 6,000.00 | ----- | |
| Ship Lauriana..... | Sadles..... | 2772 | 10,000.00 | ----- | |
| Brig Hope..... | Blanchard..... | 2773 | 3,430.00 | ----- | |
| Schooner Antelope..... | Hooper..... | 2774 | 5,000.00 | ----- | |
| | | 2756 | 14,000.00 | ----- | |
| | | 2759 | 3,000.00 | ----- | |
| Schooner Bethia..... | J. Lanier..... | 1991 | 11,037.32 | \$9,346.66 | Dec. 5, 1887. |
| | | 3859 | 7,078.66 | 6,233.33 | Do. |
| | | 786 | 3,920.00 | 3,920.00 | Do. |
| | | 470 | 3,920.00 | Discontin'd. | Do. |
| Schooner Neutrality..... | Thomas Gray..... | 193 | 1,800.00 | 1,800.00 | Do. |
| | | 2802 | 20,000.00 | 5,058.34 | Do. |
| Brig Marcus..... | Isaac Miles..... | 421 | 1,411.00 | 1,411.00 | Do. |
| | | 1926 | 1,320.00 | 300.00 | Do. |
| Schooner Phoenix..... | Sol. Babson..... | 129 | 19,891.73 | 10,846.57 | Do. |
| | | 3612 | 300.00 | 300.00 | Do. |
| | | 260 | 8,000.00 | 8,000.00 | Do. |
| Brig Mary..... | Alex. Ross..... | 2427 | 20,146.19 | 5,271.76 | Do. |
| | | 1929 | 1,050.00 | 1,050.00 | Do. |
| | | 497 | 9,450.00 | 9,450.00 | Do. |
| Schooner Alert..... | Jacob Oliver..... | 16 | 2,852.66 | 2,852.66 | Dec. 3, 1888. |
| Brig George Washington..... | J. Devereux..... | 427 | 16,000.00 | 5,462.48 | June 4, 1888. |
| | | 750 | 7,840.00 | 7,840.00 | Do. |
| Brig Mary..... | J. Choate..... | 345 | 5,000.00 | 5,000.00 | Dec. 5, 1887. |
| | | 875 | 9,310.00 | 9,310.00 | Do. |
| | | 1689 | 8,777.66 | 1,368.05 | Do. |
| | | 3039 | 11,892.32 | 1,368.05 | Do. |
| Brig Hope..... | R. Tappan..... | 1483 | 3,500.00 | 3,465.00 | June 4, 1888. |
| | | 3162 | 3,127.50 | 2,785.11 | Do. |
| | | 1752 | 5,000.00 | 4,654.11 | Do. |
| | | 5258 | 2,660.00 | 1,856.74 | Do. |
| Brig Pratt..... | Ed. Hawkins..... | 257 | 16,970.00 | 15,110.00 | Do. |
| Brig Sally..... | J. Craft..... | 931 | 14,000.00 | 12,900.00 | |
| | | 3647 | 500.00 | 500.00 | |
| | | 3648 | 800.00 | 800.00 | |
| | | 5031 | 200.00 | 200.00 | |
| | | 1948 | 1,000.00 | 1,000.00 | |
| | | 2058 | 1,000.00 | 1,000.00 | |
| | | 2990 | 600.00 | 600.00 | |
| Ship Louisa..... | H. Tallman..... | 1082 | 18,423.97 | 15,650.00 | Dec. 5, 1887. |
| Ship Catharine..... | J. Farraday..... | 513 | 14,373.34 | 14,373.34 | Do. |
| | | 1599 | 9,270.00 | 5,565.00 | Do. |
| Ship Accepted Mason..... | Delano..... | 1668 | 8,500.00 | 8,017.00 | Do. |
| | | 2734 | 15,250.00 | 8,017.00 | |
| | | 165 | 1,340.00 | 1,340.00 | |
| | | 4803 | 25,000.00 | Dismissed. | |
| Ship Speculator..... | J. S. Billings..... | 896 | 1,301.25 | 867.50 | |
| | | 2061 | 433.75 | 433.75 | |
| | | 3654 | 4,433.75 | 4,433.75 | June 20, 1888. |
| | | 3787 | 500.00 | 500.00 | |
| | | 5140 | 2,000.00 | Dismissed. | |
| Sloop Farmer..... | S. Freeman..... | 233 | 5,800.00 | 1,850.00 | |
| | | 241 | 350.00 | | |
| | | 2707 | 5,080.00 | 3,638.00 | June 22, 1888. |
| | | 1650 | 800.00 | | |
| | | 1905 | 650.00 | 1,100.00 | |
| Schooner Elizabeth..... | Thomas Trott..... | 980 | 8,653.40 | 3,538.09 | |
| | | 518 | 2,200.00 | 1,600.00 | May 28, 1888. |
| | | 1903 | 800.00 | 800.00 | |
| | | 3165 | 5,826.70 | Dismissed. | |
| Ship Joanna..... | Fosdick and Coffin..... | 113 | | 19,746.62 | |
| | | 113 | | 4,936.65 | |
| | | 113 | 49,348.75 | 4,936.65 | Jan. 20, 1888. |
| | | 113 | | 9,873.31 | |
| | | 3972 | 2,940.00 | 2,940.00 | |
| Anthony..... | John Garrett..... | 464 | 15,461.00 | 15,461.00 | Dec. 3, 1888. |
| | | 1592 | 5,988.82 | 3,796.32 | |
| Ship Arethusa..... | Robert McKown..... | 1598 | 9,906.00 | 4,212.00 | |
| | | 462 | 10,780.00 | 10,780.00 | Do. |
| | | 481 | 1,764.00 | 1,764.00 | |
| Brig Clarissa..... | Alex. Thomas..... | 492 | 11,363.13 | 11,363.13 | Do. |
| Ship Confederacy..... | Scott Jencks..... | 1052 | 400,000.00 | 160,478.29 | Do. |
| | | 3927 | 12,000.00 | 12,000.00 | |
| Schooner Isabella..... | Robert Mercer..... | 1717 | 482.54 | | |
| | | 1833 | 5,475.00 | 4,034.54 | Do. |
| | | 809 | 9,900.00 | 9,900.00 | |
| Brig Maria..... | Samuel Taylor..... | 574 | 5,880.00 | 5,880.00 | |
| | | 1624 | 25,933.43 | 14,916.93 | Do. |
| | | 663 | 490.00 | Dismissed. | |

List of cases acted upon by Court of Claims, etc.—Continued.

| Vessel. | Master. | No. | Claimed. | Allowed. | Certified to Congress. |
|------------------------------|-----------------------|------|--------------|--------------|------------------------|
| Snow Polly..... | A. Sankey..... | 2083 | \$4,577.19 | \$2,968.19 | Dec. 3, 1888. |
| Ship William..... | R. Barker..... | 1300 | 23,228.94 | 23,228.94 | |
| | | 1333 | 2,940.00 | 2,940.00 | Do. |
| | | 757 | 150,000.00 | 41,578.00 | |
| Bark William..... | B. Beckford..... | 911 | 86,000.00 | 41,578.00 | Do. |
| Ship Lydia..... | John Moore..... | 3 | 2,000.00 | Dismissed. | |
| | | 107 | 24,863.42 | 8,270.00 | |
| | | 333 | 3,000.00 | Dismissed. | |
| | | 1925 | 500.00 | do..... | |
| | | 1571 | 100.00 | 100.00 | |
| | | 1573 | 100.00 | 100.00 | |
| | | 2139 | 100.00 | 100.00 | |
| | | 2896 | 100.00 | 100.00 | |
| | | 2897 | 100.00 | 100.00 | |
| | | 2136 | 100.00 | 100.00 | |
| | | 4408 | 400.00 | Dismissed. | |
| | | 2114 | 23,988.00 | do..... | |
| Ship Rosanna..... | J. Pollard..... | 1375 | 74,980.99 | 66,560.00 | Jan. 25, 1889. |
| Brig Minerva..... | Endicott..... | 9 | 15,227.80 | 10,419.28 | Do. |
| Ship Rebecca..... | D. Brazier..... | 4238 | 4,105.25 | 2,176.21 | Do. |
| | | 85 | 2,000.00 | 2,000.00 | |
| Schooner Lucretia..... | J. Grant..... | 846 | 10,407.27 | 10,407.27 | Jan. 30, 1889. |
| Brig General Wayne..... | Allen..... | 2177 | 8,000.00 | 8,000.00 | |
| | | 893 | 5,494.00 | 5,494.00 | Do. |
| | | 1655 | 1,018.80 | 1,018.80 | |
| Ship Theresa..... | James Brown..... | 142 | 6,350.00 | 6,350.09 | Dec. 6, 1886. |
| Brig Amelia..... | Benjamin Houston..... | 472 | 12,740.00 | 12,740.00 | June 4, 1888. |
| | | 477 | 2,450.00 | 2,450.00 | Do. |
| | | 1596 | 9,719.62 | 5,475.08 | Do. |
| Brig Betsey..... | John Cushing..... | 1141 | 14,575.76 | 11,941.76 | Do. |
| | | 542 | 28,420.00 | 28,420.00 | Do. |
| | | 506 | 20,000.00 | 19,600.00 | Do. |
| Schooner Nancy..... | A. Black..... | 146 | 3,630.57 | 1,961.12 | Dec. 5, 1887. |
| | | 570 | 3,700.00 | 2,210.00 | |
| Schooner Two Brothers..... | Henry Fry..... | 145 | 2,384.57 | 2,384.57 | Do. |
| Brig Fortune..... | William Tuck..... | 177 | 500.00 | 500.00 | { Dec. 5, 1887, |
| | | 207 | 6,000.00 | 6,000.00 | { and Jan. 23, |
| | | 1906 | 1,000.00 | 1,000.00 | { 1889. |
| Schooner Betsey..... | Edward Hansford..... | 543 | 392.00 | Dismissed.. | |
| Schooner Expedite..... | Samuel Clapp..... | 740 | 7,542.28 | 7,519.66 | Dec. 5, 1887. |
| Schooner James..... | H. Gemmill..... | 388 | 20,200.00 | 7,176.34 | Do. |
| | | 811 | 11,760.00 | 11,760.00 | |
| Schooner Federal George..... | Tilton..... | 1867 | 1,550.00 | Dismissed.. | |
| Brig Gratitude..... | Reynolds..... | 1868 | 5,000.00 | do..... | |
| Schooner Jane..... | Sorensen..... | 1869 | 11,000.00 | do..... | |
| | | 2775 | 1,000.00 | do..... | |
| Schooner Hope..... | Fitzhugh..... | 1870 | 4,000.00 | do..... | |
| Brig Fair Columbian..... | Myrick..... | 2104 | 600.00 | do..... | |
| Schooner Little Will..... | Tallman..... | 1871 | 6,500.00 | do..... | |
| Schooner Port Royal..... | William Smith..... | 2634 | 24,300.00 | do..... | |
| Schooner Hazard..... | Burch..... | 2635 | 5,485.00 | do..... | |
| Ship Juliana..... | Hayward..... | 3287 | 127,407.41 | do..... | |
| Schooner Friendship..... | S. Fisher..... | 4520 | 1,146.24 | do..... | |
| Ship Hope..... | J. Rogers..... | 888 | 30,075.00 | 22,262.00 | Do. |
| | | 1495 | 23,011.00 | 19,776.00 | Do. |
| | | 3094 | 2,717.00 | 2,432.00 | Do. |
| | | 382 | 31,275.00 | Dismissed... | |
| Schooner Mary..... | J. Douglas..... | 2204 | 8,536.00 | 2,202.98 | June 20, 1888. |
| | | 2205 | 8,536.00 | 2,202.98 | Do. |
| | | 4434 | 3,300.00 | 3,300.00 | Do. |
| Ship John..... | E. Watson..... | 140 | 36,665.00 | 28,349.83 | Dec. 5, 1887. |
| Ship Hannah..... | Richard Fryer..... | 4059 | 68,276.00 | 35,840.44 | Do. |
| | | 4660 | 1,504.80 | Not valid. | Do. |
| | | 2349 | 21,991.00 | 14,465.00 | |
| Brig Alert..... | Robert Gray..... | 15 | 1,500.00 | 1,500.00 | Dec. 3, 1888. |
| | | | 3,346,726.26 | 1,604,681.99 | |

B.

In the following cases no name of vessel was given, and the cases have been dismissed for want of evidence:

| No. | Amount. | No. | Amount. | No. | Amount. |
|-----------|-----------|-----------|----------|-----------|-----------|
| 4919..... | \$100,000 | 4655..... | \$20,000 | 4928..... | \$100,000 |
| 4920..... | 100,000 | 4656..... | 30,000 | 4929..... | 100,000 |
| 4921..... | 100,000 | 4658..... | 60,000 | 4930..... | 100,000 |
| 4922..... | 100,000 | 4660..... | 10,000 | 4931..... | 100,000 |
| 4923..... | 100,000 | 4916..... | 100,000 | 5356..... | 100,000 |
| 4924..... | 100,000 | 4917..... | 100,000 | 5357..... | 100,000 |
| 4925..... | 100,000 | 4918..... | 100,000 | 4861..... | 100,000 |
| 4926..... | 5,000 | 4694..... | 100,000 | 4862..... | 100,000 |
| 4927..... | 100,000 | 4695..... | 100,000 | 4863..... | 100,000 |
| 4677..... | 100,000 | 4789..... | 100,000 | 4864..... | 100,000 |
| 4678..... | 10,000 | 4814..... | 100,000 | 4865..... | 100,000 |
| 4679..... | 100,000 | 485..... | 100,000 | 4866..... | 100,000 |
| 4680..... | 20,000 | 4818..... | 100,000 | 4867..... | 100,000 |
| 4681..... | 100,000 | 4819..... | 100,000 | 4868..... | 100,000 |
| 4682..... | 20,000 | 4821..... | 10,000 | 4869..... | 100,000 |
| 4683..... | 100,000 | 4822..... | 100,000 | 4870..... | 100,000 |
| 4686..... | 100,000 | 4823..... | 100,000 | 4871..... | 100,000 |
| 4687..... | 100,000 | 4824..... | 100,000 | 4872..... | 100,000 |
| 4688..... | 100,000 | 4825..... | 5,000 | 4873..... | 100,000 |
| 4689..... | 100,000 | 4855..... | 100,000 | 4874..... | 100,000 |
| 4638..... | 100,000 | 4856..... | 100,000 | 4910..... | 100,000 |
| 4639..... | 10,000 | 4858..... | 100,000 | 4692..... | 100,000 |
| 4640..... | 100,000 | 4859..... | 100,000 | 4907..... | 100,000 |
| 4642..... | 30,000 | 4860..... | 100,000 | 4908..... | 30,000 |
| 4643..... | 100,000 | 4663..... | 50,000 | 4909..... | 100,000 |
| 4644..... | 100,000 | 4664..... | 100,000 | 4911..... | 100,000 |
| 4645..... | 10,000 | 4665..... | 100,000 | 4912..... | 100,000 |
| 4646..... | 100,000 | 4666..... | 10,000 | 4913..... | 100,000 |
| 4647..... | 50,000 | 4668..... | 100,000 | 4914..... | 100,000 |
| 4648..... | 100,000 | 4672..... | 10,000 | 4915..... | 100,000 |
| 4649..... | 10,000 | 4671..... | 100,000 | 4661..... | 100,000 |
| 4650..... | 100,000 | 4673..... | 100,000 | 4662..... | 100,000 |
| 4651..... | 20,000 | 4674..... | 10,000 | | |
| 4652..... | 50,000 | 4676..... | 100,000 | | |
| 4653..... | 100,000 | | | | |
| | | | | | 8,380,000 |

In the following cases no specific amount was claimed:

No. 4388, ship *Essequibo*, packet, Duplex; dismissed.
 No. 4389, brig *Baron de Condelet*, McCall; dismissed.
 No. 4390, ship *Frederick*, Graham; dismissed.
 No. 4391, ship *Eliza*, Patrick; dismissed.
 No. 4392, brig *Lydia*, Roach; dismissed.
 No. 4393, ship *Ceres*, Duplex, dismissed.

| | |
|------------------------------------|----------------|
| Total amount claimed, list A | \$3,346,726.26 |
| Total amount claimed, list B | 8,380,000.00 |
| Total..... | 11,726,726.26 |
| Total amount allowed..... | 1,604,681.99 |
| Total amount disallowed..... | 10,121,044.27 |

Number of vessels, 142.
 Number of petitions, 282.

COURT OF CLAIMS,

February 7, 1889.

SIR: In reply to your request I send herewith statement of amounts claimed, allowed, etc., in French spoliation cases.

In the haste which was necessary in the preparation of these tables it has been impossible to make an official comparison and certification, but I have no doubt they are correct.

Respectfully,

ARCHIBALD HOPKINS,

Chief Clerk.

Hon. CHARLES H. MANSUR,

House of Representatives, Washington, D. C.

O

FRENCH SPOILIATION CLAIMS.

MARCH 2, 1889.—Referred to the House Calendar and ordered to be printed.

Mr. KERR, from the Committee on Claims, submitted the following

VIEWS OF THE MINORITY.

[To accompany Mis. Docs. 84, 102, *et al.*]

The undersigned, members of the Committee on Claims, have to express the opinion that the French spoliation claimants have no just demand against the Government of the United States.

Their claims, now ninety years old, originated in the years immediately preceding the convention treaty between France and the United States, dated September 30, 1800, and are founded upon acts of French hostility against our commerce for which no redress could be obtained, though such redress was diligently sought for by our Government and the means for obtaining it faithfully pursued.

In fact it is conceded that our Government was not originally liable for those individual losses suffered before the treaty of 1800 was made, and that the action taken by it on behalf of the claimants up to the date of that treaty, was completely free from all cause of complaint.

Nor can it be questioned upon any ground of authority or reason that our Government had a perfect right to abandon the prosecution of those claims against France whenever their recovery became desperate, hopeless, or impracticable, and to make a treaty of amity and commerce with France (as was done in 1800) without any provision therein concerning the claims. No legal duty or moral obligation rested upon it to continue negotiation upon the claims without reasonable prospect of success, or to permit the continuance of hostile relations between the two countries under the circumstances which then existed. And it was for our Government to judge conclusively as to the practicability of claims-recovery and as to the rightfulness and policy of restoring by treaty, upon obtainable terms, relations of peace and friendship between France and the United States. Upon those questions its decisions as made are not now subject to review and reversal by court, Congress, or citizen.

In framing the treaty of 1800 the American negotiators were compelled to accept the second division of Bonaparte's ultimatum of August 11, (Report of 1826, p. 616), which involved an abandonment of the claims. But at their solicitation the French negotiators subsequently agreed to a second article for the treaty, which was in substance *an indefinite postponement* of claims negotiation. It was very correctly described as such by M. Fleurieu in his letter to Talleyrand of June 11, 1802, (Appropriations Com. Rep., 1888, p. 26), and if it had been retained in the treaty would have been utterly worthless to the claimants. It was plainly a diplomatic device which in form postponed claims negotiation to "a convenient time," but virtually abandoned it forever.

(Rep., 1826, p. 683). Asked for by the American negotiators to save the point of honor under their instructions, and because "they dreaded exceedingly the clamors of the ship-owners and merchants of the United States," it was conceded by the French negotiators because it was harmless as a provision for the future. (Appropriations Com. Rep., 10, and Fleuriu, *Id.*, 27.)

It is to be regretted, in view of subsequent events, that the second article of the treaty was not left untouched by the Senate. Doubtless, in that case, it would have remained to this day an inoperative and useless provision; but the pretenses of reasoning for the claimants, founded upon its expungement from the treaty, could have had no existence.

In regard to this article Mr. Clay, in his report on May 20, 1826, said :

The Senate is also best able to estimate the probability which existed of an ultimate recovery from France of the amount due for those indemnities, if they had not been renounced, in making which estimate it will no doubt give just weight to the painful consideration that repeated and urgent appeals have been in vain made to the justice of France for satisfaction of flagrant wrongs committed on property of other citizens of the United States subsequent to the period of the 30th of September, 1800.

But whether the abandonment of negotiation upon the claims was virtually provided for by the indefinite postponement provisions of the treaty or was produced by Senatorial expungement of that provision from the treaty, is an immaterial question. In either case the right of abandonment vested in our Government would afford a complete sanction to what was done.

It follows, that the only possible pretense of claim against the United States must be put upon the ground of bad faith or fraud—a surreptitious and wrongful use of the claims for a public purpose, accompanied and followed by the false pretense on the part of the Government that the claims were uncollectible, and therefore worthless. If this imputation upon our Government were as true as it is false, there would be equitable ground for the parties injured to claim redress. The wrong-doer—the Government of the United States—should in that case respond in damages to the extent of the injury inflicted.

But all general presumptions are against this charge, and any fair examination of historical facts explodes it. It is to be presumed that our Government was friendly to the claims, supported them in good faith, and only abandoned them when they could not be enforced. It is also to be presumed that if the Government used collectible claims for a public purpose the fact would be set forth distinctly in some contemporary public document and be at all times by public officials frankly avowed.

But passing general presumptions, the known facts are decisive against the charge, and for convenience those facts may be stated in the following condensed form :

(1) Our Government, between 1793 and 1800, put forth strenuous and continued efforts by negotiation to prevent French depredations upon our commerce and to obtain redress for injuries actually committed.

(2) By sundry acts of Congress passed in 1798-'99 our Government made and authorized hostilities against France by our vessels of war, by our merchantmen wherever assailed, and raised a military land force for protection of our coasts from insult and invasion. By act of Congress of 7th July, 1798, our Government also declared our treaties with France (which that power had openly broken) to be null and void. These laws, which established or recognized a state of war between France and the United States were all enacted to favor our merchants

and shippers and to coerce France to respect the rights of free commerce in which they were deeply interested.

(3) The main objects of the negotiation with France in 1800 was to restore peaceful relations with France mainly for the advantage of our merchants, and to obtain indemnities for losses they had sustained; and these objects were pursued by our envoys at Paris for many months with the utmost diligence. Their instructions from our Department of State show the great anxiety felt by our Government to favor the interests of our merchants and secure their claims, including those accrued pending hostilities as well as those of earlier date.

(4) Bonaparte's negotiators, in the fifth article of the treaty, agreed to pay our merchants claims for property taken under the French decree of 9th May, 1793, and the Bordeaux embargo, and those claims (called "debts") were finally extinguished by a \$4,000,000 payment under the Louisiana purchase convention of 1803. They also agreed by the treaty to give up a large number of our vessels seized but not finally condemned, and, also, agreed to fair and friendly regulations of trade which secured our merchants open ports in France and lucrative French trade.

In these respects the convention treaty of 1800 was exceedingly valuable to our merchants and shippers, and it stands a monument to the zeal and determination with which our Government sought to promote mercantile interests and welfare.

(5) But Bonaparte's negotiators refused indemnities for our captured vessels and cargoes which had been finally condemned in their prize courts, declaring in discussion that indemnities therefor were barred by war and were not demandable under the law of nations. (Report of 1826, pp. 617-618, 633). The assertion which has been sometimes made that they acknowledged the justice or legality of those claims and the liability of France to pay them is untrue.

(6) In order to baffle negotiation upon, and to prevent even discussion of, the disputed claims, the French negotiators demanded the renewal of the old treaties of 1778 with a retroactive operation from their date, as a preliminary concession and as the condition upon which the consideration of claims on both sides should proceed. That this demand was not made sincerely or in good faith—but for the reason just stated, will become plain enough to any one who will carefully read the records of the negotiation, and is placed beyond dispute by the confidential and instructive letter of M. Fleurieu to Talleyrand, dated June 11, 1802.

That letter, (lately obtained by our State Department from the French records, and now made accessible to the historical student by its publication in the appendix to the report of the Appropriations Committee at the last session of Congress), exposes completely the motives of the French negotiators in proposing and insisting upon the renewal of the old treaties. It was because they knew that the American negotiators could not and would not renew the treaties that the demand for their renewal was made. It was to place an insuperable obstacle in the way of claims negotiation at the outset, and not because treaty renewal would be valuable to France, that those defunct instruments were placed in the fore-front of the correspondence.

Very rarely in the history of nations has the secret history of a diplomatic negotiation and the motives of those concerned in it been more fully exposed than in the instance before us. What was left untold by the official correspondence is divulged by the Fleurieu letter and by the secret journal of the American envoys.

The French negotiator in his letter to Talleyrand appears in the at-

titude of a most reliable witness; he had no motive to misrepresent or conceal the facts within his knowledge; his letter was confidential, and therefore presumably sincere, and his information about the matters upon which he wrote was direct and complete. After alluding to the war argument against the American claims, and that those claims had been urged notwithstanding that decisive ground of objection, he proceeded to say that the French negotiators then opposed to the American demand "the demand for the re-establishment of the [old] treaties in their integrity. *We had clearly foreseen that they were not authorized to, and that they never would, consent to this demand.*" After referring to the reasons which rendered concession to the French demand by the Americans impossible, and stating in substance that the demand made by the French negotiators could be made the occasion for large and exaggerated claims on their part, he adds:

This was not because we regarded that re-establishment [of treaties] *as very advantageous for France*, but it was our arm of attack and defense, etc.

Again he speaks of the second article of the treaty as follows:

"In effect article 2 of the convention recalled the treaties without rendering them obligatory for the moment, and postponed to another time the negotiation both as to the treaties and as to the indemnities mutually due or claimed. By this arrangement we reserved to ourselves to return to the treaties if the Americans ever wished to return to the indemnities. * * * In plain terms, article 2 of the convention is *nothing but an indefinite postponement*, but that postponement is to our advantage, for, having stipulated in the convention all that can truly interest us in our commercial relations, as well as the safety and property of French citizens in the United States, we can leave in oblivion some articles of ancient treaties, either *practically indifferent* or whose execution, such as that of the article which stipulates the guaranty by the United States of our possessions in America, is, properly speaking, *but a matter of words and of illusions*. The Americans, on their side, clearly foresaw, thoroughly felt, that they would *never obtain even a discussion of the indemnities, still less their payment*. * * * Such was the state of affairs at the signing of the convention; such it was well understood on one side and the other to be; and if it is not presented thus clearly and expressed in a manner thus explicit, this was from condescension, so to speak, and to arrange things for the American plenipotentiaries, who appeared to dread exceedingly the clamors of the ship-owners and merchants of the United States, if the convention should stipulate a *formal renunciation of indemnities*."

This letter is fair proof that the French negotiators' position in controversy, (shown also by former official documents), was, that our claims were barred from recovery by war; that when pressed urgently to admit them as matters of negotiation they made the counter demand that the old treaties should be renewed; that this demand was made simply to defeat claims negotiation, they well knowing that it would not and could not be conceded; that they did not deny that the old treaties were without force, having been annulled by war and by acts of Congress, (to say nothing of their open breach by French decrees, and captures thereunder), but they required their "re-establishment in their integrity" as the condition upon which negotiations should proceed. The concession due to truth was fully made that they did not regard the re-establishment of the treaties "as very advantageous for France;" that some of their provisions were indifferent, and the execution of others, such as the guaranty provision (so much spoken of), "a matter of words and of illusions." The sum of the statement is, that they made a demand for treaty restoration in bad faith and insincerely, having no right to demand nor expectation of obtaining it. The demand was strictly and truly *a pretense*, a pretended demand of what they did not want and which they knew would not be obtained. The new treaty would give them what was desired, in its commercial privileges.

(7) From the foregoing statements of fact it results that the claims were abandoned in the negotiation because their allowance by France

could not be obtained, and that the second article of the treaty of 1800, in its original form, was a virtual abandonment of them under the form of an indefinite postponement. There was no bartering of them away for a consideration; no trading of them off for a discharge from old treaties, but simply a suspension of effort for their recovery because France would not pay and could not be compelled to pay them. It may be added, that our envoys had no power to revive the old treaties in their integrity, and did not by any act or declaration acknowledge them as subsisting, or admit any obligation or duty resting upon the United States to renew them.

(8) The Senate of the United States ratified the treaty of 1800 (with the second article struck out) by a vote of 22 to 9, the affirmative vote including most of the Senators from States along the Atlantic sea-board where the claimants resided. (Senate Executive Journal, vol. 1, p. 377). Evidently this action was not taken in hostility to the claimants—to imperil any chance of claims-recovery in the future; but for reasons heretofore fully explained and which will endure the most searching debate. The Senators had before them the official correspondence which preceded and accompanied the negotiation of the treaty, the secret journal kept by our envoys at Paris, and the decision of our Supreme Court in *Bass v. Tingy*, 4 Dallas, page 37, (which was heard at the August term, 1800), and knew very well that the claims would never be voluntarily paid by France and could not be enforced against her as legal obligations. The friends of the claimants in the Senate therefore, on February 3, 1801, struck out the indefinite postponement section of the treaty, because it was worse than worthless as an international stipulation and was calculated to mislead persons unacquainted with its true character.

It may be added here, that the explanation appended by Bonaparte to his ratification of the treaty as amended by the Senate, while it could have no effect upon the treaty itself or qualify a ratification of it which was unconditional and absolute, was, in the language of Mr. Jefferson, "a legitimate inference" of claims renouncement or abandonment. Plainly, as claims for war losses they could not survive a treaty of peace and amity unless expressly provided for therein.

(9) In no way, at no time pending the negotiation and acceptance of the treaty of 1800, did our Government acknowledge the existence of the old treaties of 1778, or any right of France to demand their renewal; in fact those former treaties were then extinct, and the demand for their renewal, as we have already seen, was an impertinent and hypocritical "pretense," put forward simply and only to baffle the American envoys, and prevent any consideration of the American claims.

(10) The American negotiators did not ever propose, (as has been incautiously asserted), that our Government should pay to France eight million of francs—\$1,600,000—for a discharge from certain articles of the old treaties. They did offer, under an extreme anxiety to get the claims acknowledged, in the extremity of their efforts to that end, and misled by informal observations of one or more of the French negotiators, to take the old treaties with the right to extinguish their obnoxious provisions by a deduction of the sum mentioned from the amount of the private claims allowed. (Report of 1826, p. 643). In their report to John Marshall, Secretary of State, dated October 4, 1800, they say:

"The American ministers * * * offered an unlimited recognition of the former treaties, though accompanied with a provision to extinguish such privileges claimed under them as were detrimental to the United States, by a pecuniary equivalent to

be made out of the indemnities which should be awarded to American citizens; a compensation which, though it might have canceled but a small portion of the indemnities, was nevertheless a liberal one for privileges which the French ministers had often admitted to be of little use to France under the construction which the American Government had given to the treaties."

This offer was, of course, rejected by the French negotiators, not because it was too small in amount for the guaranty and port privilege provisions of the old treaties, but because, as the French negotiators declared,

"It was indispensable to the granting of indemnities, not only that the treaties should have an unqualified recognition, but that their future operation should not be varied, in any particular, for any consideration or compensation whatever."

It is plain that the offer was made in the interest of the American claimants and to be carried out at their expense, in order to win the great object of negotiation—an acknowledgment of their claims.

By a sacrifice of \$1,600,000 they might win an allowance from France of more than \$20,000,000, according to any modern estimate of their claims. But this offer was not a recognition of the old treaties as existing obligations, but a proposition to renew them with their obnoxious provisions expunged. If accepted by France it would give to our Government and claimants the option to get indemnities for the latter upon their submitting to a moderate abatement of their demands. It was to get the private claims allowed, and not to relieve our Government from defunct treaties, that the offer was made.

The foregoing statement of facts, taken in connection with those set forth in the reported views of a majority of the Committee on Appropriations at the last session of Congress, (committee report No. 2961, first session, Fiftieth Congress), establishes solid grounds of opposition to the payment of these claims by the United States.

We place little reliance upon the expressed opinions of public men favorable to these claims. It is evident that those opinions were founded to a great extent upon false or imperfect information, and that they are not authority to control the judgment of Congress. There is also high opinion against them, and the question of Government liability is to be determined upon the facts, now much better known than pending former debates, when an outlay of \$5,000,000 only was proposed, instead of the enormous sum which now constitutes the claimants' demand.

DANIEL KERR,
S. W. T. LANHAM.